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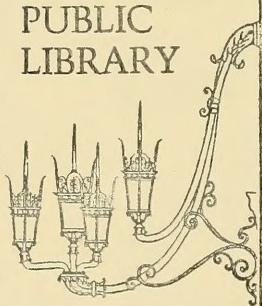
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COLLISION OF URBAN RENEWAL WITH ZONING:

THE BOSTON EXPERIENCE 1950-1967

A Thesis Presented by

William Weismantel

to

The Committee on the Degree of Doctor of Philosophy
in City and Regional Planning

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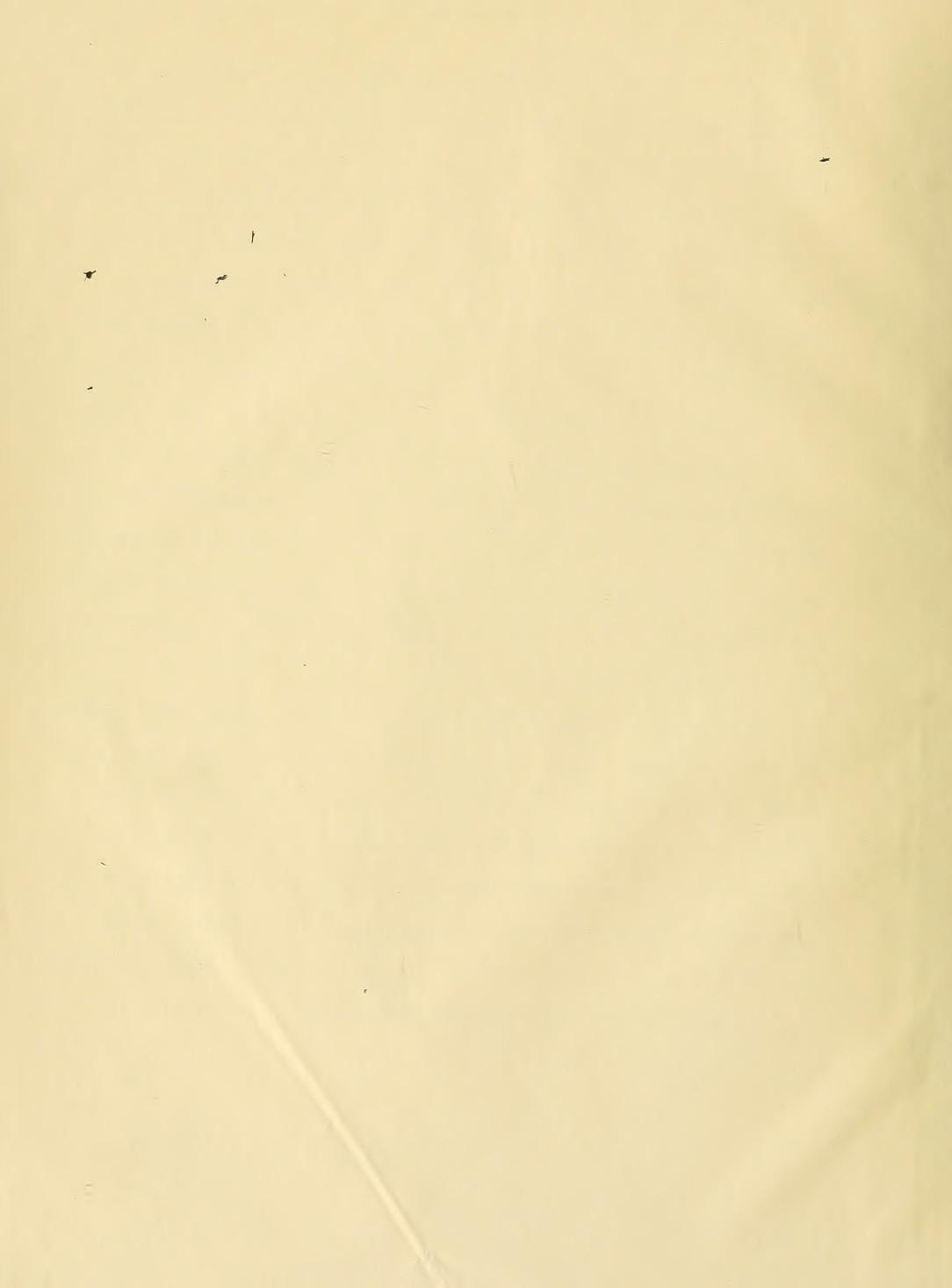


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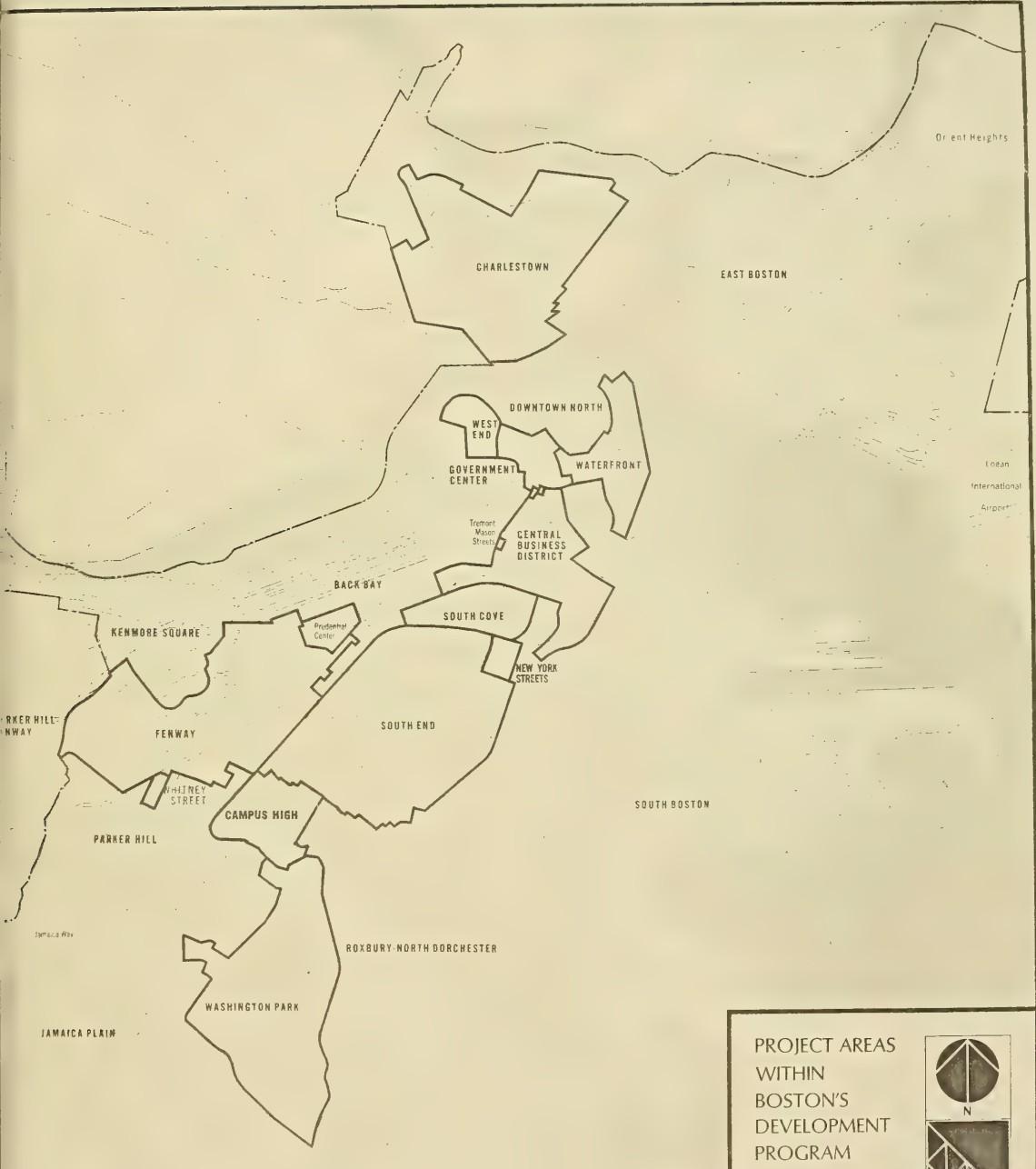


Fig. 1.--Location map for many projects described in this Thesis.

CHAPTER I

INTRODUCTION AND SUMMARY

This is a case study of the laws and administration which controlled building development in Boston from 1950 - 1967, but especially from 1965 - 1967. During 1950 - 1967 these laws and administration evolved from dominance by zoning, to a situation of pluralism, in which several laws and programs were active simultaneously. Zoning controls the shape and location of all buildings in the city and the uses of space. The other laws and programs include public housing, urban renewal,¹ urban redevelopment corporations,² historic districts³ and public works. In the Thesis title all these latter programs are summed up as "Urban Renewal." These laws and programs are often referred to here as non-zoning processes, to distinguish them from zoning law.

The evolution from dominance by zoning law to pluralism of zoning and non-zoning processes is called a collision, because each of the non-zoning programs conflicted in some way with zoning, and the

¹Enabling Act cited below, p.91

²Enabling Act cited below, p. 91

³These are the Historic Beacon Hill District (1955) and the Back Bay Architectural District (1966). See below, p. 92

resolution of these conflicts was audible to persons attending public hearings during this period. The collision represents differences between land development policy of the early 1950's and policy of the mid 1960's. The Zoning Code of 1965 was actually conceived during 1950 - 1954, but did not become law until 1965⁴. The non-zoning processes were determined and set in motion gradually between 1954 and 1965. Thus, the Zoning Code took effect in 1965 in the midst of several programs representing later policies. This case study focuses on 1965 - 1967, the first two years of operation of the new Zoning Code.

This thesis documents the collision well enough to be of interest to officials in other large central cities where a similar collision is expected, or is occurring. Time-series data in Chapter IV on the twenty-five largest central cities points to other cities likely to undergo experience similar to Boston's. But the main product of the Thesis is a proposed new form of zoning. The following chapters present evidence of the failure of the 1965 Zoning Code, and are a search of that

⁴The Zoning Enabling Act for Boston was introduced into the legislature in 1954, but was not passed until 1956. Massachusetts, Acts of 1956, c. 665. The City Council refused to adopt the act until amendments giving the Council power to approve Zoning Commission appointments were adopted in 1958. A Zoning Commission with power to prepare a Zoning Code and Maps was appointed in 1959. The Zoning Commission read zoning code drafts and held public meetings until 1962, when the Commission adopted the Code and sent it to the Mayor for signature. The new zoning law was supported by Mayor John B. Hynes, during his 1950-1959 term of office. Mayor John F. Collins, who took office in 1960, had his own vision for renewing Boston and would not sign the new Zoning Code. In March 1963 the Code was adopted 9 - 0, notwithstanding disapproval of the Mayor, to take effect December 31, 1964. For a description of the 1924 - 1964 law see: City Planning Board, Zoning for Boston: A Survey and a Comprehensive Plan, (Boston: City Planning Board, 1924), cited hereafter as Zoning for Boston (1924); and Massachusetts, Acts of 1924, c. 488 as amended.

material from 1965 - 1967 development experience which suggests a new form of zoning.

The main characteristics of the 1965 Zoning Code are compared in the next few paragraphs to a suggested new form of zoning. Text of the new zoning proposal, called a Planning and Land Development Act for Boston, is set out in Appendix A.

Main Characteristics of the 1965 Boston Zoning Code

1. Monopolistic in Jurisdiction. All structural changes, new buildings and all uses of space are controlled by the same Code, maps and procedure. The Code applies to all development, public and private.

2. Quantified and Anticipatory. Through maps and text keyed to them, the maximum dimensions of buildings and the permitted uses of space for every parcel of land in the city is set out in detail. These controls are expressed in feet, permitted floor area, parking spaces per dwelling unit, and in other precise ways. In this sense they are quantified. The controls are anticipatory in that they regulate what an owner can do with his property before he has applied for a permit to change his structure or activities.

3. Nondiscretionary administration. The Zoning Code is administered by clerks who have neither the authority or the training to exercise professional discretion in applying the Code to building and use permit applications that come before them. If the applicant seeks a permit to erect a structure or conduct an activity clearly permitted by the Code, the clerk will issue a permit.

4. Extraordinary Appeal Procedure. The Zoning Code establishes the right to appeal to an administrative board only in extraordinary situations described in the code as "special exceptions," or when there are unique conditions adversely affecting the property of the applicant, and not generally affecting other property in zoning district.

5. Extraordinary Amendment Procedure. The Zoning Code should be amended infrequently and in a comprehensive fashion. There is a procedure by which a property owner can seek an amendment to the Code as it affects his property, but the applicant must show that the Code or maps were drafted in error, or that changes have occurred in the neighborhood which warrants amendment to the zoning map.

6. Little Participation by Property Owners in the Zoning Decision Process. The property owner as applicant for a building permit is expected to make his plans conform to the dimensional and use requirements of the Code. Only when the property owner can make an extraordinary appeal or applies for an amendment does he get a public hearing. Owners of property adjacent to that for which a permit is sought are notified only if there is an appeal or amendment application.

7. No Participation by Affected Parties Who are Not Property Owners. The limited rights of property owners to participate in the zoning decision process described in paragraph 5 above are not available to those affected who are not property owners.

Main Characteristics of the Planning and Land Development Act for Boston

1. Limited in Jurisdiction. The land development code would exempt public housing, urban renewal, urban redevelopment corporations, historic districts and public works. Safeguards to control these programs, if they are to operate independent of the land development code, are suggested in Chapter VIII, pp. 216-221.

2. Qualitative and Responsive Controls. The proposed system can apply qualitative or responsive controls when appropriate as well as quantitative or anticipatory controls. Qualitative controls are expressed through words and require expertise in interpretation. A responsive control is one proposed by an applicant for a building permit and approved by public officials or is improvised by a public official at the time of the application for permit.

3. Discretionary Administration. Every application for a building or use permit would be reviewed by a professional environmental designer, such as a graduate architect or city planner, who would have power and competence to interpret qualitative controls, and who could recommend appropriate responsive controls. The professional environmental designer, called a Development Examiner, would in effect conduct an informal hearing before making his recommendation. He would seek opinions of the applicant, owners of nearby properties, and the public.

4. Simple Appeal Procedure. The Development Examiner would have power to interpret quantitative or qualitative controls and issue permits, subject to rights of appeal. He would have power to recommend issuance of a permit based on responsive controls. Any party dissatisfied with the decision of a Development Examiner in issuing or refusing to issue a permit

could appeal to the Development Commission. An appeal would be required where the Development Examiner recommends that a permit be issued on the basis of responsive controls.

5. Simple Amendment Procedure. When the Development Commission approves a responsive control recommended to it by the Development Examiner and issues a building permit according to such responsive control, the Development Commission is amending the Code. A party seeking an amendment to the Code but not a building permit applies first to a Development Examiner, who asks the opinion of affected parties and makes a recommendation to the Development Commission regarding the proposed amendment. The Development Commission would have power to deny, approve or revise the recommendation of the Development Examiner as to the Code amendment. The Development Commission thereby amends the Code.

Each decision of a Development Examiner or the Development Commission, along with the facts of the case and the reasons given in support of the decision, might be published. These decisions would accumulate into a system of case law. Such law would be an authoritative interpretation of the qualitative standards of the Development Code and would support periodic revisions of the Code.⁵

6. Extensive Participation by Property Owners in the Zoning Process. Property owners can propose responsive controls and can participate in the decision and recommendation process of the Development Examiner and in the decision by the Development Commission. This is true of a

⁵Other comparisons with the common law system are made on pp. 223 - 225.

property owner seeking a building permit or an amendment to the Code, and to owners of earby property. These procedures were outlined in paragraphs 3, 4, and 5 just above.

7. Participation by Residents and Affected Parties Who are Not Property Owners. These users of the urban environment have the same rights as property owners to participate in the decision and recommendation process of the Development Examiner and in the decision of the Development Commission. These procedures were outlined in paragraphs 3, 4 and 5 above.

The rules of zoning, which was Boston's dominant land development code in the early 1950's, follow logically from a doctrine or mystique which was widely believed by urban planners, officials and citizens at that time. Similarly, the number of programs which taken together are Boston's land development law of the late 1960's are logical extensions of a newer doctrine which is gaining acceptance.

The doctrine which explains zoning of the 1950's is (1) that the physical arrangement of buildings and activities is the result of competition between property owners of the city to enclose and use space, and (2) the arrangement of buildings and activities vary in intensity with distance from the center of the city with larger buildings (in relation to lot size) and more intense activities, such as commerce, closer to the center. One familiar zoning rule which follows logically from this doctrine is that the maximum allowable dimensions of structures for every building site can be determined in advance and embodied in a code and zoning district map.

The newer doctrine of the late 1960's is (1) that the physical arrangement of buildings and activities is determined by the needs of their occupants and users, and (2) these needs are controversial and difficult to determine, and there is no consensus⁶ over an ideal city-wide arrangement of buildings and activities. One rule which follows logically from this newer doctrine is that the maximum allowable dimensions of a proposed building and its permitted use must be determined when a permit to build is sought, and that occupants and users of the proposed building, and of its environs, must participate directly or through advocates in that determination.

The remainder of this chapter describes in summary the sequence of laws and programs concerning land development in Boston which were adopted between 1950 and 1967. Subsequent chapters deal with parts of that sequence in more detail. In the early 1950's Boston planners assessed the condition of the city and found that in most sections buildings were both structurally obsolescent and were crowded too close together. The planners were encouraged by noticing that typical postwar construction in the city, besides replacing old buildings with new,

⁶"Like the rest of the country, Levittown is beset with conflict: class conflict between the lower-middle class groups; generational conflict between adults, children, adolescents and the elderly. . . . Insisting that a consensus is possible. . . . Only exacerbate(s) the conflict." Herbert J. Gans, The Levittowners (New York: Pantheon Books, 1967) p. 412.

"The way cities develop, it is not the case that a thorough planning analysis will always reveal a single solution which will best satisfy the needs of everyone involved.... In many, if not most, instances, there are likely to be opposing forces at work." Norman Williams, Jr., The Structure of Urban Zoning (New York: Butterheim Publishing Corp., 1966), p. 78.

was replacing crowded buildings with buildings having more open space around them. Ways were sought to stimulate more of this open-style post-war construction. Three methods, to operate simultaneously, were proposed: (1) There should be total clearance of the old, crowded building sections in the center of the city to make sites for open-style construction. Clearance should be accomplished by a public agency and rebuilding by private land developers. (2) The next belt of buildings were considered not as old and crowded. This medium-aged stock of buildings could be gradually replaced with new, open-style construction. The replacement would occur randomly: a new building here, a new building there. (3) It was expected that the undeveloped, outer edges of the city would be filled by the new, open-style of construction, giving Boston a share of postwar suburbs within its city limits.

Post war construction was occurring with larger yards and more open space than was demanded by Boston's zoning law which had been in effect since 1924. Such open-style construction was occurring spontaneously, not because it was required by law. Boston planners reasoned that a new zoning law which fitted the open-style of construction more closely would stimulate more rapid replacement of the old, crowded buildings. Any future building intended by its sponsors to fill up its lot, overshadow the street and fail to provide offstreet parking should be outlawed by a new zoning code. If all builders were required by zoning to follow the open-style of construction, more building would occur because the individual property owner would know that if he replaced his aged, bulky building with a smaller one having space around it, his neighbors would have to follow these same postwar standards

when they replaced their buildings.

Certain regularities were observed between the size of a postwar building in Boston and its distance from the State House Dome. The greater the distance from that Hub, the smaller and more open was the building in relation to its building lot. Regularities in the use of land and buildings were also discovered. Commerce and apartments were observed to occur with greater frequency as distance from the Hub decreases. These regularities in building bulk and use helped in preparing a new zoning code and maps in two ways: they provided a doctrine or mystique for zoning and provided positive building measurements on which minimum yard, maximum building density and other zoning district regulations could be modeled.

The following doctrine or mystique of competition between property owners was seen in these regularities of building bulk and distance from the Hub. The closer a parcel of land is to the Hub, the more accessible it is to the rest of the city, and the more valuable it is as a building site. It is natural that buildings close to the Hub have more bulk than

buildings farther out, because there is more demand for the convenient, accessible central locations. It is also natural that the more central parcels be used for more profitable activities, such as commerce and apartments, and the more distant parcels have less profitable uses such as rowhouses, duplexes and detached homes. It is necessary that income per acre of land increase with proximity to the Hub, because land costs and taxes per acre of land rise with proximity to the Hub. A property owner was behaving naturally if he filled his lot with the same intensity of use and the quantity of enclosed space as his neighbors. Proper competitive behavior was believed to vary with distance from the Hub. A bulky building or an apartment might be proper in one location, but out of place and over-competitive a mile further from the Hub.

The new Zoning Code was thus designed to regulate competition between land owners. It must therefore apply to all developers, public and private. It would be unfair to exempt some developers, and (it was believed) to do so would slow down the competition which was to produce a renewed Boston. It also follows that the unique character of one neighborhood or one enclave of buildings must not be recognized or given special treatment by the Zoning Code and maps. The only significant fact in determining the permitted dimensions of a proposed building is its distance from the Hub, according to zoning theory of the early 1950s. The relation of the building site to adjacent buildings or to the surrounding neighborhood was believed irrelevant. All buildings equally distant from the Hub will eventually have the same dimensional characteristics, through the natural competition for space that is occurring,

and which is forced to occur by the Zoning Code and maps.

It also follows that such a Zoning Code and maps can preregulate new construction and changes of use of space in detail for all parcels in the city. Preregulation is possible because the Code is based on the regularities discovered in the distribution of postwar buildings and uses of space around the Hub. Preregulation is desirable as a fair, impersonal way to govern the competition between land owners to enclose activities. The applicant for a building permit under the new Zoning Code must deal with a clerk who has the limited function of comparing the applicant's plans with the preregulated Code requirements. The Code requirements are quantified: they are expressed in minimum or maximum feet, number of parking spaces, ratio of floor area to land area, etc. There are almost no qualitative standards in the Code calling for judgment in interpretation. Building department clerks have neither the power nor the need for discretion or professional judgment in administering the Zoning Code. Preregulation; quantified Code requirements; administration by clerks with no discretionary powers: these are means of keeping a proper distance between competing property owners, on the one hand, and the public regulators of the competition on the other.

Property owners are important collectively, as competitors. They express themselves collectively, through regularities in size and intensity of the enclosed activities which they conduct on their parcels. There is no ordinary procedure for the participation of the individual property owner in a zoning decision. Most zoning decisions are predetermined and embodied in the Zoning Code and Map. The Code does allow

a property owner in an exceptional case to appeal to a Board which has discretionary powers. The individual property owner then has a right to be heard before such Board, and thus participate in its decision. Owners of nearby properties can also be heard at such an exceptional hearing.

Users of buildings and land who are not property owners have almost no rights under zoning. The competition between property owners in enclosing activities is primarily for the benefit of property owners. Non-propertied users of buildings and land will benefit indirectly, according to zoning theory, by the emergence of a renewed Boston composed of postwar open-style buildings. Technically the non-propertied have no right to speak at a zoning hearing.

Most of the above theory and findings were made by Boston planners in 1950 - 1954. The new Zoning Code and maps to enforce this theory and findings on the city did not become law until the beginning of 1965. Many programs and policies in conflict with the Zoning Code were set in operation between 1954 and 1965. The conflicts became evident during 1965-1967, the first three years of operation of the new Zoning Code and maps.

The 1950 policy that the old building sections in the center of the city should be completely cleared had changed to a policy of limited clearance by 1965. This was in deference to residents of such areas, most of whom were not property owners. The old buildings themselves, and their close spacing was reevaluated during 1954-1965. Legislation to protect parts of these older building areas for their historic and

architectural value was adopted. Thus in the middle of the city where the new Zoning Code encouraged large, new buildings, laws and policies to retain small, old buildings were adopted. Further out, in the belt where not-quite-as-old buildings were to be replaced gradually by new buildings of the open-style, programs to rehabilitate and retain these middle-aged buildings got under way. Tall buildings were erected in highly visible locations throughout the city after their sponsors got variances from the zoning law or relied on some new statute or regulation giving immunity from zoning. Thus the zoning ideal of a cone-shaped city skyline made of buildings which decrease in size and intensity with distance from the Hub was distorted by 1954-1967 building programs and trends. Furthermore the zoning ideal of a cone-shaped city reinforces social and economic segregation and thereby conflicts with a social integration policy of the 1965/1975 General Plan For the City of Boston and with a program of locating public housing for the elderly within middle class neighborhoods miles from the Hub.

Public and limited-profit development and control programs which did not exist in 1954 had by 1967 produced tangible results. The rate of new construction and alteration based on estimated cost reported on building permit applications rose during 1961-1967 to more than twice the 1947 - 1960 rate. Urban redevelopment corporations got building permits during 1954 - 1967 for 145 million dollars in construction, including such well-known projects as the Prudential Center. Permits for 10 million dollars in construction on urban renewal sites was issued from 1954 to 1960. Permits for 150 million dollars in construction on

urban renewal sites were issued between 1961 and 1967. Five new urban renewal projects got underway during 1961-1967, and five others were approved.

A 1954-1967 program of building public housing for the elderly through small, scattered projects got a degree of approval from tenants and those living near the projects which the large public housing projects of 1938-1942 and 1947-1953 never enjoyed.⁸ Several historic buildings were restored and rented during this period after the Beacon Hill District Commission refused to let the building owners demolish them. On urban renewal sites buildings which were deliberately designed to gain the approval and affect the activities of users of the city were completed and made available. There is a new City Hall; a new subway station; there are pedestrian plazas enclosed by new buildings and protected from vehicular traffic. There is a modern shopping center in an older neighborhood which previously had been served mostly by small shops. The same area has a new YMCA, new Boy's Club, new rental housing developments sponsored by churches and a labor union. The high quality of architecture in urban renewal projects in Boston in the 1960s has been noted in books and national periodicals.

Various kinds of administrative or legislative immunity from zoning was granted or evolved for many of these new programs. But some parts of the city, such as Commonwealth Avenue, fell under the jurisdiction of two

⁸Evidence of success of public housing for the elderly is the continuation of that program. See Table 10.

or more inconsistent control systems. Delays, ritualistic proceedings, and confusion in planning and administration of building development resulted from having such a number of new programs. But this multitude of programs is producing more and better new buildings than would result if Boston attempted to return to the simple model of competing private property owners regulated by a single zoning code and map as was espoused in 1950-1954. There is no turning back. Needed is an explanation of why there should be several development and control programs operating simultaneously each with its own legislative basis, and needed are rules to improve their coordination.

It is apparent that many public and semi-public development agencies, or city departments with much autonomy, will be acting simultaneously, each looking for sites to carry out its separate objectives. This pluralism in means of carrying out public objectives embodies the lack of consensus over which activities should have the sought after sites and buildings. For a given site in Boston, one might find proponents who want it left unchanged for historic reasons; other proponents of private redevelopment there; others who would see it cleared and replaced with public housing. The many development agencies are expressions of different demands for space in Boston. The erosion of the zoning ideal of a cone-shaped city skyline by an erratic pattern of building construction and retention since 1954 is further evidence that there is no consensus over an ideal urban form here.

This lack of consensus is submitted as a major doctrine statement or mystique from which a development control system must be derived.

The other more positive doctrine is the user objective nature of the contemporary development and control processes, compared to the owner objective of zoning. User objectives are seen in the public development programs; in the political strength and responsiveness which neighborhood organizations have demonstrated in shaping urban renewal policy; in the growing importance of the public hearing as a decision device; in the influence of environmental science, as it is applied by architects, urban designers and other design professionals practicing in Boston and in other phenomena.

Under zoning theory property owners participate in decision making mostly through their collective behavior in enclosing and using space. A property owner participates in the new style of decision making as an individual. By encouraging property owners to stand up and be identified at public hearings, the external effects of individual buildings may be improved and socialized. When a property owner expresses his intentions at a public meeting, he is inclined to adopt and express commitment to user reasons and values as well as to self interest values.

The following rules are logical implications of a system where there is no consensus over urban form other than a tendency to resolve issues in favor of one or more competing interests of users of the environment. The first rule is that the positive development and control programs which have their own statutory objectives and decision procedures should be immune from zoning. The latter is a program appropriate to furthering a single ideal of urban form and owner rather than

user objectives. A second rule is that building permit decisions should generally be preceded by a public hearing. In many cases this will simply be a meeting between an applicant and a hearing examiner to which interested parties have been invited and of which a record is kept. The hearing is proving an effective way of focusing the various development and preservation interests onto specific issues and getting a decision. The hearing should be conducted by or advised by professional environmental designers as assurance that decisions are made on user issues. Decision makers at the hearing must have discretion to interpret qualitative standards, which are the typical media of the legislative charge given to development and historic district agencies. Qualitative standards establish the purpose of a control without specifying precise dimensional means of achieving it.⁸ Quantitative standards, the mainstay of traditional zoning, will still have a part in the control system. It should be settled in advance, for example, that buildings along Commonwealth Avenue will follow the historic 20-foot setback.

This decision process must be able to apply responsive controls as well as anticipatory. Accepting lack of consensus over urban form implies that a value first presented at a public hearing and not part of an official plan must have an opportunity to be legitimized. Residents of the city and users of its streets need the opportunity for eleventh hour objections to or endorsements of proposed change to

⁸This concept was mentioned early in this chapter and is further defined below, p. 204.

compensate them for the superior access to information enjoyed by public agencies, professional designers and the proponents of large projects. Furthermore, there is an interdependency⁹ between early and late stages of the building planning and design process -- in fact, it extends into the construction and occupancy phases. This interdependence can be recognized better by a responsive rather than an anticipatory decision process. For example, a parking requirement established by city planners for the Zoning Commission for a specific site may be proven inaccurate by private architects in the preparation of a detailed improvement program for that site.

Responsive controls are needed because many of the present zoning district maps of Boston do not fit the needs of the various areas as expressed by current city policies and the sentiments of many neighborhood groups. While these obsolete zoning maps are being replaced by neighborhood plans -- a process that will take years -- responsive controls are needed.

⁹The Tavistock Institute, Interdependence and Uncertainty: A Study of the Building Industry, (London: Tavistock, Ltd., 1966).

The proposed procedure can apply quantitative, qualitative, anticipatory, or responsive controls to any situation. In areas where quantitative, anticipatory controls are available and have the support of residents of the area and city officials, the proposed control system would be as unyielding as the Zoning Code to the proponent of change, perhaps more so.

This Thesis has two summary chapters, the First and the Eighth or last chapter. Chapter I, "Introduction and Summary," introduces the major proposal of the Thesis, a Boston Planning and Development Act, and compares it to the Zoning Code. Chapter VIII, "Towards Explaining and Coordinating a Field of Development and Control Programs," has findings from the data and discussions of previous chapters and derives from these findings principles to guide development and control process in the future. Chapters II and III have a 'rise and fall' organization as indicated by their titles, "Theory and Methods of the 1950 - 1954 Zoning Program," (Chapter II), and "Collision of 1950 - 1954 Zoning With Policies and Programs of the 1960's," (Chpater III). Chapter IV, "Measuring the Evolution Towards Non-Zoning Programs and Controls," quantifies the relative lessening in importance of Zoning from a program which was the exclusive control over 77 percent of all Boston construction in 1947 - 1953, to an expected exclusion control over only 39 percent of all Boston

construction in 1968-1974. Numerical comparisons of Boston development rates with those of the 25 largest cities (1960 population) are made. These comparisons show that it is possible to predict which kinds of cities will experience a Boston-style collision of urban renewal with zoning, and that such collisions in other cities can be expected.

Chapter V, "Coordination by Exemption of Development and Control Programs from Zoning," points out that Boston has gone farther than most cities, according to questionnaires received from officials, in exempting programs from zoning. Some unique influences of Massachusetts law are pointed out. The Chapter begins speculation on the effect of complete exemption of many programs from zoning by showing that non-zoning programs have their own sources of objectives, and their own decision techniques to rely on.

Chapter VI, "Analysis of 1965-1966 Zoning Board of Appeal Decisions," seeks findings applicable to any environmental decision process which features the hearing.

Chapter VII, "Urban Renewal as a Source of Decision Methods: The Washington Park Project," like Chapters V and VI, is a search for resources to replace zoning. Chapter VIII, a summary of recommendations, relies on findings from Chapters V, VI and VII. Benefits that Boston or another city might enjoy from following the recommendations are suggested in Chapter VIII.

This Thesis exemplifies the participant-observer research technique. During six Harvard semesters beginning in the Fall of 1964 I worked part time as a planner with the Boston Redevelopment Authority

(B.R.A.). My assignment was to observe zoning and other building development and control processes and propose code and statutory amendments, and improved administration. This Thesis is largely a report on my findings from that assignment.

I saw the boards and commissions described here in action, and made proposals to some of them as a B.R.A. representative, sometimes as an advocate, sometimes as an advisor. I directed a study of all Board of Appeal zoning cases decided during the first two years operation of the new Zoning Code (1965-1966), with the help of B.R.A. technicians and the City of Boston Data Processing Center. (Chapter VI). The purpose was to determine how well the new law was operating. Findings of questionnaires from officials of other cities on coordination between zoning and other programs (reported in Chapter V) were presented to the Zoning Commission in arguments for Code amendments partially exempting urban renewal and public housing from zoning. Law cases and statutes of other states reported in Chapter V were investigated to prepare for that same presentation.

Interviews of Washington Park officials (Chapter VII) were made in preparing a chapter for a book on design coordination in urban renewal which Professor Roger Montgomery of University of California is editing. Throughout the Thesis use is made of excellent annual reports and records on building activity at each street address which are maintained by the City of Boston Building Department.

CHAPTER II

THEORY AND METHODS OF THE 1950-1954 ZONING PROGRAM

"The great majority of residential parcels, some of which are developed over a century ago, are unable to conform to modern standards of density, coverage, open space and setback." This is a conclusion of the Boston City Planning Board in 1953.¹ The following 1950 quote shows the City Planning Board thought the best thing that could happen to most rowhouse areas of Boston was total clearance, not rehabilitation:

Some 1100 acres where conditions are particularly bad were typed as 'high priority' redevelopment areas. These are the sections where public action should be concentrated first. They will probably absorb all of the financial resources that can be applied to slum clearance for a number of years to come. The remaining 1600 of the total 2700 acres of redevelopment areas will have to wait for attention. It is possible that by the time they can be attacked, they will have deteriorated still further, until they are as bad as the present high priority areas are now.²

The inner city neighborhoods of Charlestown, East Boston, the South End, the North End, the West End, South Boston and lower Roxbury were thus

¹City Planning Board, Zoning Policies for Boston, (Boston: City Planning Board, 1953), p. 12. Cited hereafter as Zoning Policies (1953).

²City Planning Board, General Plan for Boston, Preliminary Report, (Boston: City Planning Board, 1950), p. 40. Cited hereafter as General Plan (1950).

proposed for almost total clearance.

The 1950-1954 City Planning Board finding that the rowhouse areas of Boston are obsolete determined the West End project urban renewal plan of 1953, which proposed and accomplished total clearance there:

Streets now use 29 percent of the total [West End] study area. These streets are very narrow, most of them having 35-foot right-of-ways and only 20-foot paving strips. Many alleys, typically 10-feet wide, exist in the area. The street pattern slices the area into nearly fifty small blocks and militates against a reasonable use of the land.

The combination of narrow streets, heavy building coverage, and the fact that most buildings in the West End are four or five stories high, help to make the West End environment substandard in terms of sunlight and fresh air.³

Boston planners in 1950-1954 concluded that much of their City was occupied by buildings which were both structurally obsolete, and also outdated in their dimensions and their use of space. New buildings to replace these old structures were sought for environmental and economic reasons. "One of the most critical needs is the attraction of new buildings and investment capital to bolster the sagging tax base and support an adequate level of municipal services and facilities."⁴

Those making the 1950-1954 studies were encouraged by the open-style being followed by most post World War II building construction. One story manufacturing plants, elevator apartments with space around the towers, garden apartments and new shopping centers, all with off-street parking gave a glimpse of a future Boston that might be just around the corner.

³Urban Redevelopment Division, Boston Housing Authority, West End Project Report, A Preliminary Redevelopment Study, (Boston: Boston Housing Authority, 1953), p. 5.

⁴Zoning Policies (1953), p. 1.

Open-style building was occurring in Boston during this period because: (1) Nationally, as well as in Boston, there was disenchantment with high density building style and a positive seeking of a lower density building environment, especially the detached home, owned by its occupant. (2) These two factors caused in-migration and building construction to occur outside of Boston, in the surrounding metropolitan area, where there was ample undeveloped land for such open-style construction. (3) As population decreased and building rates dropped off in Boston, so did land costs there.⁵ (4) What building did occur in Boston then tended to be at lower density than in the past, because this was economically possible due to lowered land costs,⁶ and such buildings were in demand. In other words, in post World War II Metropolitan Boston there was a movement towards open-style construction. Most of this occurred outside the City of Boston. What little occurred within Boston was interpreted by Boston planners as a trend which might

⁵The drop in urban land value in Baltimore after World War II has been reported. Baltimore resembles Boston in its loss of population between 1950-1960. Both are surrounded by metropolitan areas which gained population during that period.

In 1931 the Baltimore central business district was assessed at 175,400,000 dollars. In 1947 it had dropped in assessment to 128,400,000 dollars. This was a 27 percent loss. Assessment near the central business district dropped 23 percent. The intermediate area stood still in value. Land values of the rim around the outside of the city grew 126 percent during this period. Albert D. Hutzler, "Decentralization and the Central District," United States Chamber of Commerce, Your City is Your Business, Businessmen's Conference on Urban Problems, (1947) (Washington: Chamber of Commerce of U.S., 1947), p. 192.

⁶Frieden shows data demonstrating that dwelling units per acre decrease with site acquisition costs per acre. Bernard J. Frieden, The Future of Old Neighborhoods, (Cambridge, Mass.: MIT Press, (1964), p. 80.

gradually replace all or most of Boston's building inventory then considered to be too crowded, with a new open-style of buildings.

An article by Guy Greer, a leading land economist of that period in a 1948 issue of the Journal of Housing,⁷ discloses the prevailing national attitudes towards building density:

Just think . . . what would be the result if all the blighted areas were bought at present prices and then new buildings went up, big enough and close enough together to pay out on the land cost. . . . The nightmare of congestion we have now in our main business districts is nothing to what would then result, in areas two or three times as large. Either we let nature take its course on the chance that eventually prices will sink low enough to permit profitable uses of the land in accordance with sound plans, or else the local government itself can buy up that land, paying as little as possible but taking losses, if necessary, when reselling or leasing it for the low density use that in most instances will make sense.

Publications of that period by the American Public Health Association criticized a high density building pattern. "Land crowding" is a characteristic for which a neighborhood gets a bad rating, according to the "Appraisal Method for Measuring the Quality of Housing" (1945).⁸ Qualities of lower density housing, such as daylight illumination, direct sunlight, protection against excessive noise and provision of adequate space for exercise and play were listed by APHA as "fundamental physiological needs." (1950).⁹

⁷Guy Greer, "Urban Development," in Journal of Housing, V, No. 2, (Feb. 1948), 29.

⁸American Public Health Association Committee on the Hygiene of Housing, An Appraisal Method for Measuring the Quality of Housing, (New York: American Public Health Association, 1945).

⁹American Public Health Association Committee on the Hygiene of Housing, Basic Principles of Healthful Houses Housing (2d ed.; New York: American Public Health Association, 1950).

In 1951 the Architects' Advisory Board Committee of the Public Housing Administration acted as an editorial board to the Journal of Housing in choosing the best ten publicly aided housing developments.¹⁰ One criteria had to do with internal space planning, another with construction and materials. Here is the site planning criteria: "Imaginative, ingenious site planning to give all possible units the advantage of sun, prevailing winds, view, private outdoor space." The values of fitting the development into the existing building order, or of providing opportunities for social interaction were not mentioned. In only one of the citations of the ten winning designs was the value of blending new with old buildings mentioned.

Rodwin in his study¹¹ of over 100 years of Boston housing gives as the major reason for the slump in city of Boston dwelling construction following World War II a long-term trend in the direction of ownership, which reflects both consumer and builder preferences.

The following table shows the trend in population growth and housing type in the City of Boston and the surrounding metropolitan area between 1940 and 1960. The trend was towards building outside of Boston, and in a smaller building pattern (in terms of dwelling units per structure) than was characteristic of Boston.

¹⁰Journal of Housing, VIII, No. 10. (October, 1951), entire issue.

¹¹Lloyd Rodwin, Housing and Economic Progress: A Study of the Housing Experiences of Boston's Middle Income Families, (Cambridge: Harvard University Press and The Technology Press, 1961), p. 71.

NET CHANGES IN DWELLING UNITS BY BUILDING SIZE FOR
BOSTON V. SURROUNDING COUNTIES,^a 1940-1950, 1950-1960

Dwelling Units per Structure	1940 Totals		1940-1950 Changes		1950-1960 Changes		1960 Totals	
	Boston	Surrounding Counties	Boston	Surrounding Counties	Boston	Surrounding Counties	Boston	Surrounding Counties
One Family	31254 15%	280407 48%	24636	13138	-16863	218214	39027 16%	511759 61%
Two Family	42402 20%	161378 28%	938	19895	-6232	-33112	37108 16%	148161 18%
Three-Four Families	83061 39%	90757 16%	-1398	14578	-107	-7249	81556 34%	98086 12%
Five and More Families	54530 26%	50547 8%	14434	15344	12052	5565	81016 34%	71456 9%
Mobile Homes	267 1%	1106 1%	-100	-144	-36	1187	131 1%	2849 1%
Total	211514 100%	584195 100%	38510	62811	-11114	185305	238838 100%	832311 100%

^aThis includes the counties of Essex, Middlesex, Norfolk, Plymouth and Suffolk, but not the City of Boston. Source U.S. Department of Commerce, Bureau of Census, Census of Housing, 1940, 1950, 1960.

Figures 14 and 16 as well as the discussion on pp. 92, 100-101 below quantify the extent of Boston's building lag between 1939 and 1960. This slump in rate of building within Boston caused land prices to decline there, making it feasible to place less revenue producing floor area per lot area than previously.

Means were examined in 1950-1954 to stimulate private builders to renew at a faster rate. The 1950 General Plan (1950) quoted above proposed total clearance of 2700 acres of the inner City, with rebuilding to occur by private forces following contemporary building practices. Another stimulus besides clearance will be zoning, concluded the City Planning Board in 1953.

Studies of postwar construction published in 1953 showed that the 1924 zoning law was not at all responsible for the open-style being followed by post World War II builders.

There is overwhelming evidence that past building here [in Boston's core] as in the balance of the City, has been at markedly lower floor ratios [the ratio of building floor area to its lot area] than the zoning permits, and that the most recent construction is even lower than that of the past. Downtown, for example, the highest floor area ratio found for post war construction was below 8.0, where zoning allowed about 15.0. In other zones, use of coverage and building height well below maximum allowances are the rule.¹²

It was reasoned that open-style development could be stimulated by a new zoning law which used contemporary construction trends as the standard for all subsequent construction or changes of occupancy. "These examples [of post World War II construction] vary sufficiently from the zoning limits as to offer a significant measure of current standard

¹²Zoning Policies (1953), p. 16.

practice, and, therefore, reasonable guide to limits that could be incorporated in zoning regulations without inhibiting new construction," argued a 1953 report.¹³

Most developers were voluntarily following the new standards, and would not object to a zoning law which required no more than what they were already doing. The errant minority of builders who were reproducing outmoded building forms of the past would be forced to modernize by a new zoning law. This was expected to have a stimulating effect on all building construction. A land owner would be likely, under a new zoning law, to invest in a new building having space around it and off-street parking, because he would be assured that new construction on nearby properties would likewise follow high standards.

This dissatisfaction with old Boston building ways, and pinning of renewal hopes on new building standards explains why the new Zoning Code deliberately makes most pre-World War II buildings standing in Boston non-conforming in such matters as required front yard, required rear yard, minimum lot size and floor area ratio. The General Plan (1950) promised that "the complete overhaul of the zoning of residential areas will assist in transforming them into well-designed neighborhood units and encourage application and modern techniques to community development."¹⁴ A new Zoning Code would effect "corrections of past low-standard buildings, over a period of time and where this can be done equitably." In 1953 the City Planning Board proposed "Specific policies . . . pertaining

¹³ Zoning Policies (1953), Technical Supplement, Section I, p. I.

¹⁴ General Plan (1950), p. I.

to certain location in Boston where the pattern of development seems outmoded and might be corrected through zoning."¹⁵

The new Zoning Code was expected to forthwith shape development occurring on the small inventory of virgin land at the edges of the city. More gradually, the new Code would affect the existing built-up portions of the city by guiding the replacement of each crowded, obsolete structure with a new structure having more space around it and off-street parking. The oldest parts of the city were considered too far gone to respond to random building replacement. These areas would require massive, total clearance and assembly of small parcels by public action, so that larger, cleared sites could be made available to the twin forces of resurgence: private builders, and the new Zoning Code.

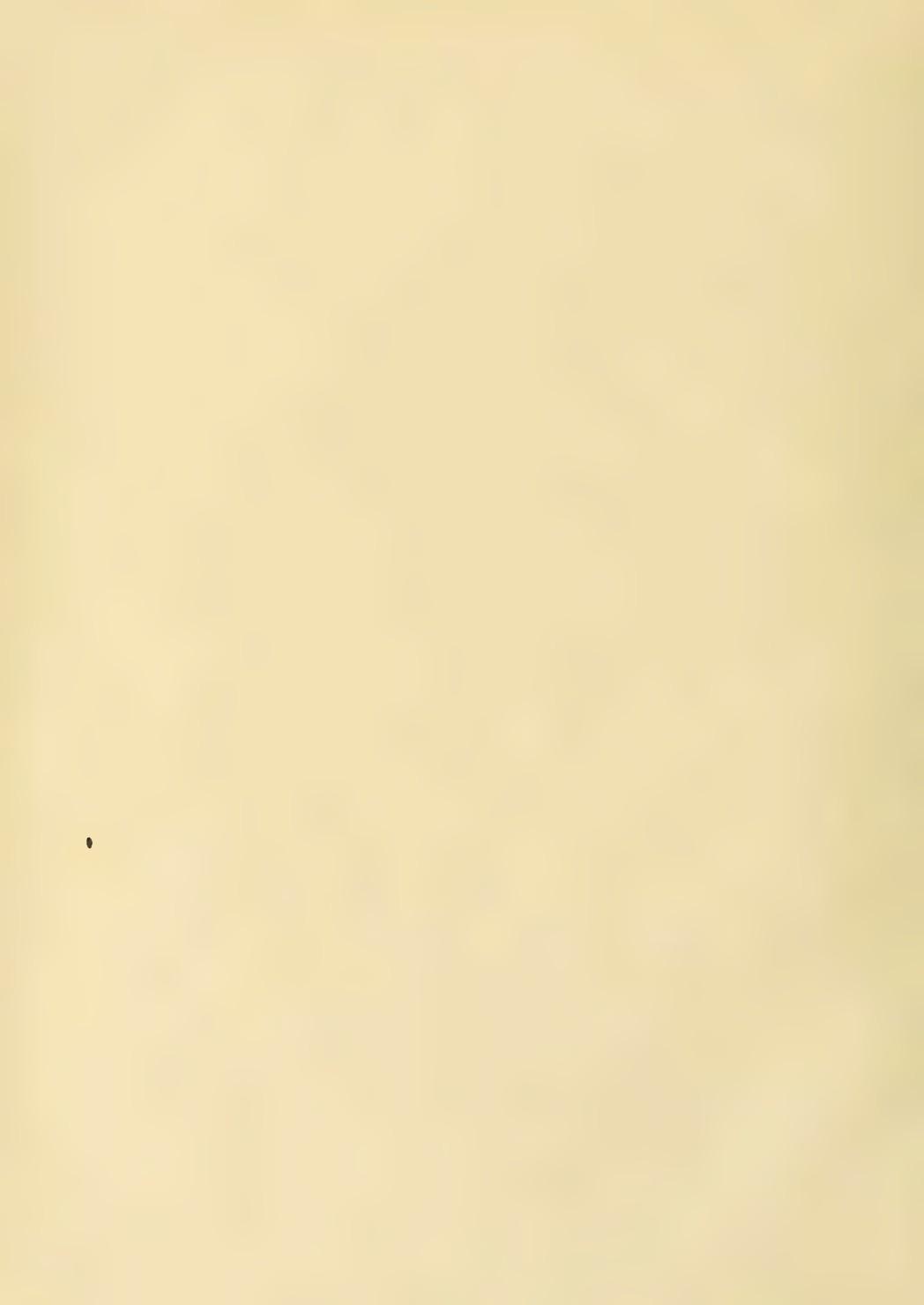
The strategy for replacing crowded buildings with ones of a more open-style through controls was being pursued in many cities in the 1940s and 1950s. That strategy was expressed in the case study of the Waverly area of Baltimore published by a Federal agency in 1940:¹⁶

Fifty percent of the single-family, row and detached residential structures in Baltimore do not conform to those standards of alignment and spacing which accumulating experience has proved necessary for free traffic flow, safety at street intersections, and health, as the last is influenced by light and air.

Building set-back lines have never been established in Waverly and, too frequently, throughout the older sections of the Area proper spacing and structural alignment seem to have been totally disregarded. . . .

¹⁵Zoning Policies (1953), pp. 6,9.

¹⁶U.S. Federal Home Loan Bank Board, Waverly: A Study in Neighborhood Conservation, (Washington: Federal Home Loan Bank Board, 1940), p. 33.



This condition can be rectified only gradually. For that purpose, proper set-back lines should at once be established throughout the Area and those lots which, by reason of their narrow frontage, have promoted improper structural spacing, should now be mapped for progressive resubdivision and enlargement. As later demolition and new construction proceed, proper alinement and adequate spacing for light and air will thus be assured.

Belts or rings of intensity were discovered in Boston within the postwar sample of buildings studied in deriving 1954 zoning policies:

Density contrasts in the new construction are especially significant. Of the non-residential examples eight of nine having a floor area ratio higher than 2.0 are within the downtown one-mile core, where median density ranges from 2.5 to 5.0. In the other mile rings, 70 of 71 examples are under 2.0 as follows: In the one to two-mile ring, the median density is 0.75; two to three-mile ring, 0.5 to 0.75; outer rings, less than 0.5. This pattern of lower densities as one proceeds further from the center bears out an entirely reasonable and logical assumption; it is significant that the data demonstrates it so clearly.¹⁷

These policies were, therefore, established for the new Zoning

Code:

Floor area ratios in each zoning district can be safely set at lower figures than Boston's present zoning permits, without running counter to current design and construction practice. . . . Floor area ratios for all types of buildings should be so set as to require lower maximum densities at further distances from the City center, with a few possible exceptions at outer subcenters where high levels of accessibility justify high densities over relatively small areas. With these exceptions, floor area ratios in excess of 2.0 are not needed outside of Boston's central area.¹⁸

Studies made as part of the General Plan (1950) concluded there were then four belts of housing density in Boston. The density from one belt to the next decreased with distance from the Hub. Different housing

¹⁷Zoning Policies (1953), p. 16.

¹⁸Zoning Policies (1953), pp. 10-11.

types were found in each density belt: four story and higher multiple dwellings in the high density belt; three and four story multiple dwellings in the high medium density belt; two family detached and semi-detached dwellings in the low medium density belt; and one or two family detached dwellings in the low density belt. The Plan report has photographs of Boston housing of these types as found in the various belts.¹⁹ The belts, varying in density with distance from the Hub, are portrayed on a large map in the report called Proposed Land Use. Average densities by belts are to be 40 families per acre, 21-30, 11-21 and 0-11 families per acre, respectively, according to this Plan.

The General Plan (1950) thus based the future land use arrangement on regularities found in the pattern of Boston building types and densities. At the same time that Plan urges correction of building deficiencies through total clearance in central areas, and gradual replacement elsewhere.

The Boston Zoning Code²⁰ and maps as they became effective at the beginning of 1965 enforce the intensity and dwelling type regularities which had been discovered and made zoning policy in 1950-1954. The Zoning Code has S Single Family, R General Residential, and H Apartment Residential districts. In the S Single Family District the single family detached dwelling is the only housing type permitted. In the R District one and two family dwellings including row-houses are permitted. In the

¹⁹General Plan (1950), p. 38.

²⁰City of Boston, Zoning Code, effective December 31, 1964. Cited hereafter as Zoning Code (1965).

H District all dwelling types including apartments are permitted, as well as hotels and motels approved by the Board of Appeal. Maximum permitted floor area ratio varies within these residential zoning districts from 0.3 (floor area can be 30 percent of lot area) to 5.0 (floor area can be five times lot area). There is a gradation of intensity from the suburban S.3 District to the downtown H 5 District. Other building dimensional requirements become less strict between the S.3 District and H 5 District; these include minimum lot size, maximum permitted building height, minimum yards, and minimum parking space per dwelling unit.

As part of this Thesis the 1965 residential zoning districts and distance from the center of Boston of each 1960 Census Tract were compiled. It was found that the less intense the residential zoning district, the farther the district is located from the State House Dome. The only exception to this rule is the H-2-65 District which was especially written after 1955 for the historic preservation law which governs Beacon Hill development. The residential zoning districts as mapped with their average distance from the center of the City are reported below. A few dimensional characteristics of each district are included to give the flavor of the zoning gradation system:²¹

²¹Zoning by districts which decrease in permitted intensity with distance from the center will produce a round city. An early zoning authority argued that "a round city affords the greatest area with the shortest distances to the center, whereas a long city affords the smallest area with the longest distance to the center." Edward M. Bassett, Zoning (New York: Russell Sage Foundation, 1940), p. 23.

TABLE 2

SOME INTENSITY-DISTANCE CHARACTERISTICS OF RESIDENTIAL
ZONING DISTRICTS IN THE BOSTON ZONING CODE AND MAPS, 1965

Zoning District & Floor Area Ratio	Miles from ^a Center of City	Lot Size, Minimum Sq.Ft.	Maximum Height of Building	Minimum Front Yard
S.3	6.5	9000	35'	25'
S.5	6.2	6000	35'	25'
R.5	5.0	5000	35'	20'
R.8	3.5	3000	none	20'
H1	2.3	2000	none	20'
H-2-65	0.3	none	65'	20'
H2	1.2	none	none	20'
H3	1.1	none	none	15'
H4	1.0	none	none	15'
H5	0.9	none	none	15'

^aThis was obtained by assigning a 1965 residential zoning district to each 1960 census tract and measuring the straight line distance of each tract to the State House Dome. The distances of all tracts having the same zoning was averaged and reported here.

The zoning map thus prevents construction of apartments beyond the H and R.8 Districts, which average 3.5 miles or less from the Hub. Duplexes are allowed out through the R.5 District, which is located 5.0 miles from the Hub. In the S District, located 6.2 miles from the Hub, only detached dwellings are permitted. The Zoning Code has no special procedure for permitting the mixing of dwelling types in the R.5 or S Districts. The only procedure in the Code by which retail and personal service uses can be introduced into housing developments within residential districts is limited to the residential building having 50 dwelling units or more.²² Between 1960 and 1966 only about one-third of all new dwelling units were located in such larger dwellings.

The old law²³ was more brief and less restrictive than the new Zoning Code regarding permitted uses in business districts. The Local Business District regulations in the old law permitted all amusements, places of assembly and retail activities. The new Local Business District is limited to conveniences serving the immediate residential neighborhood. The 1953 land use studies²⁴ showed that downtown office and retail uses were expanding, while wholesale and manufacturing uses were inert in total space demands. This finding suggested an increase in business zoning in the core and a decrease in industrial zoning. This was done by changes in the permitted uses in the B General Business

²²Zoning Code (1965), Sec. 8-7, No. 78.

²³Massachusetts, Acts of 1924, c. 488 as amended. This is Boston's zoning law from 1924 through 1964.

²⁴Reported in Zoning Policies (1953) and its Technical Supplement.

District of the new Zoning Code to limit wholesale and manufacturing uses.

The B district is applied to sites throughout the city. Permitted uses include "the general retail business needs of a major part of the city." At the outer edges of the city there are B-1 zones; downtown, B-8 and B-10 zones. From 1924-1965 Boston was overzoned for business. The 1958 zoning report²⁵ indicated there was two and a half times as much land zoned for business as used for business. The new zoning maps reduce the amount of business zoning by 40 percent.

A new Waterfront Industrial District was created to reserve shoreline sites for port activities. The 1965 Zoning Maps made only slight changes in the distribution of land zoned for industry.

Section 2 of Boston's zoning enabling act²⁶ establishes what can be regulated by zoning, and the purpose served by regulation. Key language from Section 2 is set out below. A careful reading shows that its authors, Boston planners of 1950-1954, accepted the free market competition theory as the central vision for a renewed Boston:

For the purpose of promoting the health, safety, convenience, morals or welfare of its inhabitants, the City of Boston may, by a zoning regulation adopted by its Zoning Commission, regulate and restrict the height, number of stories, and size of buildings and structures, the size and width of lots, the percentage of lots that may be occupied, the size of yards, courts and open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, agriculture, residence or other purposes . . . For any or all of such purposes a zoning regulation may divide the City into districts of such number, shape and area as

²⁵City Planning Board, Proposed Zoning, (Boston: City Planning Board, 1958), p. 6.

²⁶Massachusetts, Acts of 1956, c. 665.

may be deemed best suited to carry out the purposes of this act, and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration or use of buildings and structures, or use of land, and may prohibit noxious trades within the City or any specified part thereof. The regulations and restrictions shall be uniform for each class or kind of buildings, structures or land, and for each class or kind of use, throughout the district, but the regulations and restrictions in one district may differ from those in other districts. Due regard shall be paid to the characteristics of the different parts of the City; and the regulations and restrictions shall be the same for zones, districts or streets having substantially the same character.

A zoning regulation shall be designed among other purposes to lessen congestion in the streets; to conserve health; to secure safety from fire, panic and other dangers; to provide adequate light and air; to prevent overcrowding of land; to avoid undue concentration of population, to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements; to conserve the value of land and buildings; to encourage the most appropriate use of land throughout the City; and to preserve and increase its amenities.

The Zoning Code and maps can establish dimensions for buildings and land, and can regulate the uses of buildings and land, according to Section 2 quoted above. Such regulations shall form districts which are internally uniform, but one district can be different from another. This is an enormous grant of power, without an obvious purpose. Two kinds of purposes are set out in Section 2. One type has to do with minimal conditions for a healthy environment: adequate light and air; security from fire, panic and other dangers; conservation of health; prevention of overcrowding and congestion. The other kind of purpose has to do with conserving values, building what is appropriate, preserving amenities.

The Enabling Act statements about how zoning will affect the City give definition to this second group of purposes. A portion of the City has value, is being conserved, is being used appropriately if it is being used in the same way as adjacent and nearby parts of the City.

A City which separates different sizes of buildings and different uses of land and buildings into internally uniform districts will accomplish this second type of purpose.

The Act permits one standard of minimum building characteristics for health and safety in one district, and a different standard in another district. The idea of relative crowding, relative congestion, relative supply of light and air is implied. For any part of the City, there are building characteristics which are the minimum necessary for environmental health in that portion of the City. A building or use of land is a threat to health and safety not if it is more intense than some absolute standard, but only if it is more intense than the other buildings which will be permitted to surround it.

The Enabling Act speaks only of placing limits on building or land use intensity. It does not contain language permitting minimum requirements of intensity. The purposes are to "prevent overcrowding of land; avoid undue concentration of population, to provide adequate light and air." Minimum, but not maximum land dimensions, and maximum, but not minimum building dimensions would seem to be implied, since a minimum land dimension or a maximum building dimension controls maximum intensity. Why a less intense district should be protected from a more intense invader, but the less intense use not be protected from more intense surroundings, can be explained by the free market competition theory.

According to the competition theory, buildings or uses will naturally be surrounded by other buildings or uses of the same intensity because each class of buildings or uses is located in a particular

place in the competitive struggle to be at the center of the City.²⁷ The less intense building which chooses to locate among a more intense group of buildings does not deserve protection. This less intense use has chosen to disregard the rules of the competitive struggle, and must pay the consequences.²⁸ The solution for the detached home being hurt by surrounding apartment buildings is to metamorphose into an apartment building. Since most buildings in the vicinity are apartments, this location must be close enough to the center of the City that a land owner can build an apartment building, which is a relatively profitable use in rent per acre, rather than a detached home, which is less profitable. It is a principle of behavior of land owners and buildings in this competitive City to attempt to maximize profit, resulting in the "highest and best use" for each parcel of urban land. The owner of the detached dwelling in the midst of apartment buildings does not deserve zoning protection because he has chosen not to maximize his profits, and because no building owner but himself is suffering due to this irrational choice.

27"Our American cities are like mobs, architectural mobs, with each building fighting its neighbor for a place in the sun." 'That is just the point', we say, 'We must have light and air'. But in the jungle there is eternal shadow." Harland Bartholomew, quoting Louis LaBeaume, Proceedings of the National Conference on City Planning, (Rochester, N.Y., 1923), p. 11.

"Today the employer in lower man Manhattan will tell you quite frankly that if a girl cannot earn such and such an amount she is no longer worth the floor area she is occupying." Robert A. Pope, Proceedings of the National Conference on City Planning, (Rochester, N.Y., 1910), p. 109.

28" . . . The right of a person to pure air may be surrendered in part by his election to live in a location that is already occupied by business or industry which fouls the air with smoke, gas, soot or other impurities." Schlotfeld v. Vinton Farmer's Supply Co., 252 Id. 1102, 109 N.W.2d 695, 699 (1961).

No published systematic study has been found showing the relation between zoning districts and land values. But courts accept testimony from appraisers on the effect of a particular zoning restriction on the value of parcel of land. For example in the Euclid²⁹ case testimony was accepted that the first 200 feet of depth of the property in question was worth only 25 cents per square foot because it was restricted by zoning to residential use. It would have been worth 75 cents per square foot for business purposes, if business had been allowed there. The remainder of the property was found to be worth only 5 cents per square foot because restricted by zoning to residential use. If industrial development had been permitted the land value would have been 21 cents per square foot.

In an Appraisal Journal³⁰ article Edmond Fisher gives an example of property located on a major street and zoned for residential use. The city council rezoned the property to permit either commercial or industrial use, and this increased the value of the property from 2,500 dollars per acre to between 20,000 and 25,000 dollars per acre. He gives another example of land zoned for single family residential use and worth from 6 to 8 cents per square foot so zoned, but worth 1 dollar per square foot if rezoned for commercial use.

Brown in a text³¹ on real estate economics urges appraisers to

²⁹Village of Euclid v. Ambler Realty Co., 272 U.S. 365, 384 (1926) [cited hereafter as Euclid v. Ambler (1926)].

³⁰Edmond C. Fisher, "Zoning in Eminent Domain: A Moral Hazard," The Appraisal Journal, XXXIII, No. 3 (July, 1965), 331.

³¹Robert Kevin Brown, Real Estate Economics (Boston: Houghton Mifflin Co., 1965), p. 68.

consider zoning, because it affects income and therefore the value of property. He reports that property is sometimes zoned for single family use when it could be developed more profitably for commercial use or multiple dwellings, and gives an example of property worth 30,000-40,000 dollars as an office, but sold for only 18,500 dollars because restricted by zoning to single family residential use; and property worth 32,000 dollars for apartments but sold for only 20,000 dollars because restricted by zoning to two family dwelling use.

Notice how in zoning theory buildings and uses of land are given human characteristics. The United States Supreme Court opinion upholding zoning has language which relies both on a relative standard for minimal environment conditions and anthropomorphic reasoning:

" . . . The development of detached house sections is greatly retarded by the coming of apartment houses. . . . In such sections very often the apartment house is a mere parasite, constructed in order to take advantage of the open spaces and attractive surroundings. . . . The coming of one apartment house is followed by others, interfering by their height and bulk with the free circulation of air and monopolizing the rays of the sun which otherwise would fall upon the smaller homes. . . . Apartment houses, which in a different environment would be not only entirely unobjectionable but highly desirable, come very near to being nuisances. . . ." ³²

Anthropomorphic reasoning is common in zoning and occurs because the competition theory depends on the substitution of building owners

³²Euclid v. Ambler (1926).

for their buildings. This substitution explains many peculiar zoning results. It explains why apartments are permitted (conditionally) in the industrial districts, under the new Zoning Code, but single family homes and two family dwellings are not permitted there. (Exclusion of single family and two family dwellings is an exceptional case of protecting less intense uses from the more intense surroundings.) Allowing apartments follows anthropomorphic reasoning because apartments are "tougher" than single family homes. They rank closer to industries in the Zoning Code list of permitted uses, which is a grading by intensity. Such a substitution of the building owner for the building can likewise be seen when an apartment is used as a "buffer" between stores and homes. Substitution occurs in "four-corner" commercial zoning, where all four corners are zoned for business, to treat the owners equally.

Edward M. Bassett, who is considered the father of American zoning because of his participation in the seminal 1916 New York City zoning law, in preparing the Standard Zoning Enabling Act, and in his books on zoning, reveals again and again that zoning is a regulation of competition between property owners.³³

It became apparent that the remedy [for crowding by tall buildings] was not merely a limitation on height but also the setting back of the upper parts of high buildings so that each owner would divide the light and air with his neighbor [emphasis supplied].

The requirement of uniformity [within the zoning district] was considered most important in the early days of zoning while the subject was in the balance. Property owners would have been more hostile if they had thought that councils could select parts of districts for special favors. This rule helped to make it understood that all property situated alike would be treated alike.

³³Edward M. Bassett, *Zoning*, (New York: Russell Sage Foundation, 1940), pp. 24, 60. Mr. Bassett contributed directly to preparation of the 1924 Boston zoning law as counsel to the City Planning Board.

The Boston Zoning Code has five characteristics which follow logically once the free market competition idea is accepted as the true and inevitable vision of future Boston. These characteristics are:

1. Zoning is the basic tool for carrying out the City Plan, because zoning is local government's means of regulating and stimulating that free market competition which will renew the City.³⁴
2. Neighborhood plans or individual neighborhood identity and character are not recognized by zoning.³⁵ Individual buildings obey city-wide, in fact metropolitan, forces of competition which dictate the size of buildings and the intensity of activity they contain. The vital fact determining how a site should be used is the distance of that site from the center of the City rather than the unique character of its neighborhood, and rather than any plan prepared by neighborhood residents.
3. The users of buildings and sidewalks in the City are not the primary beneficiaries of zoning. That control is designed to stimulate and regulate healthy free market competition between land owners in pursuit of their self interest. Users of buildings and sidewalks in the City will receive benefits from stimulated building activity. Specifically, a new City built to contemporary standards will emerge

³⁴"The basic tool [for carrying out the plan] is zoning, which directly regulates the use of land and the density of population for all future construction." General Plan, (1950), p. 45.

³⁵"The General Plan of the entire City was made first, and then refined through detailed studies of parts of the City. A zoning map prepared in that manner can be applied against any proposed development within any neighborhood in Boston, and the proposal trimmed to comply with the Zoning Code before a building permit is granted." Zoning Policies, (1954), p. 2.

around them. Inferior building development will be prevented by zoning not so much to benefit users of the would-be building, but rather to avoid discouraging owners of adjacent sites from improving their property. The zoning enabling act has such standards as "to provide adequate light and air," but the standards are variable; they change from one zoning district to the next. The inference is that zoning is not directed to benefit users of buildings and sidewalks, but to insure that property owners, equally situated, each provide the same amount of light and air around their buildings.

4. Property owners have limited roles in the zoning decision process. The Boston Zoning Code intends that most building permits be granted without notice to adjacent property owners or a hearing. When there is a hearing and property owners are notified the Code does not inform the Board of Appeal how the Board should use facts or values presented by adjacent property owners. Users of buildings and pedestrians, citizens, visitors and workers within Boston who are not property owners have no rights under the Boston Zoning Code to participate in zoning decisions. The wishes and opinions of both classes of citizens--the user of buildings, and owners--are irrelevant to the real goal of zoning; the known and measurable City that is to emerge from free competition between property owners.

5. Zoning regulations controlling the dimensions and use of every parcel of land in the City can and should be determined and adopted in advance, and not at the time each property owner is ready to build or change occupancy. Such detailed regulation is possible because of regularities such as the gradient of floor area ratio with distance

from the center of the City which results from the free competition of property owners. Detailed preregulation is desirable because it keeps an arm's length distance between competing property owners, and zoning officials who regulate the competition. Zoning by detailed preregulation can be administered by clerks who inspect plans, read the Code requirements and either grant or refuse to grant building permits. Such clerks do not need discretionary powers which might be abused by favoring one property owner over adjacent property owners.

CHAPTER III

COLLISION OF 1950-1954 ZONING WITH POLICIES AND PROGRAMS OF THE 1960'S

The General Plan (1950) for Boston called for total clearance of 2,700 acres. In fact, 12 urban renewal project areas completed, in execution or planning in 1967, will amount to over 2,860 acres. About 722 acres or 25 percent is clearance. The remaining 2,100 acres will not be cleared; present buildings will be retained and rehabilitated.

The 1950's policy of substantial clearance was carried out in Boston's first two urban renewal projects: the New York Streets Project, where housing was replaced by manufacturing plants, and the West End Project, where a low and middle income "urban village" was 95 percent cleared for medium and high income high rise apartments. The Washington Park Project, the first of the 1960's, involves only 22 percent clearance. Many of its clearance sites are to be redeveloped for facilities needed by the remaining residents whose homes are not to be cleared. The Government Center Project planned in 1960 has substantial clearance (72 percent), but involves a relatively small total area compared to other downtown projects which involve less clearance: Downtown Waterfront (57.6 percent clearance), Central Business District (23.7 percent clearance), and South Cove (18.4 percent clearance). The

abrupt change in policy from total clearance to partial, and the gradual policy evolution towards less and less clearance can be seen in Table 3 which follows.

Areas covered by two limited clearance residential projects, the South End (17.2 percent clearance), and Charlestown (23.7 percent clearance) were proposed for substantial clearance in the 1950 plan. See Figure 2. In two other neighborhoods proposed for total clearance by the 1950 plan, East Boston and South Boston, so many residents are opposed even to limited clearance projects that no urban renewal has been undertaken there.

The creation of the Beacon Hill District in 1955, with extensions in 1958 and 1963, and the creation of the Back Bay Residential District in 1966, show the evolution in policy from inner city clearance in the 1950's to rehabilitation and preservation in the 1960's. The South End Urban Renewal Plan, adopted in 1965, has this objective for its row-house area:

Maintain the physical character of buildings architecturally consistent with the surrounding neighborhoods. . . . The unique, unifying, and harmonious predominance of brick facades shall not be covered with sheathing or siding of any kind or design.¹

There is serious conflict between the zoning controls operating on Beacon Hill, in Back Bay² and South End inner city neighborhoods, with the new preservation policies for these areas. Specifics of this conflict are

¹Boston Redevelopment Authority, South End Urban Renewal Plan, (Boston: Boston Redevelopment Authority, 1965), p. 33.

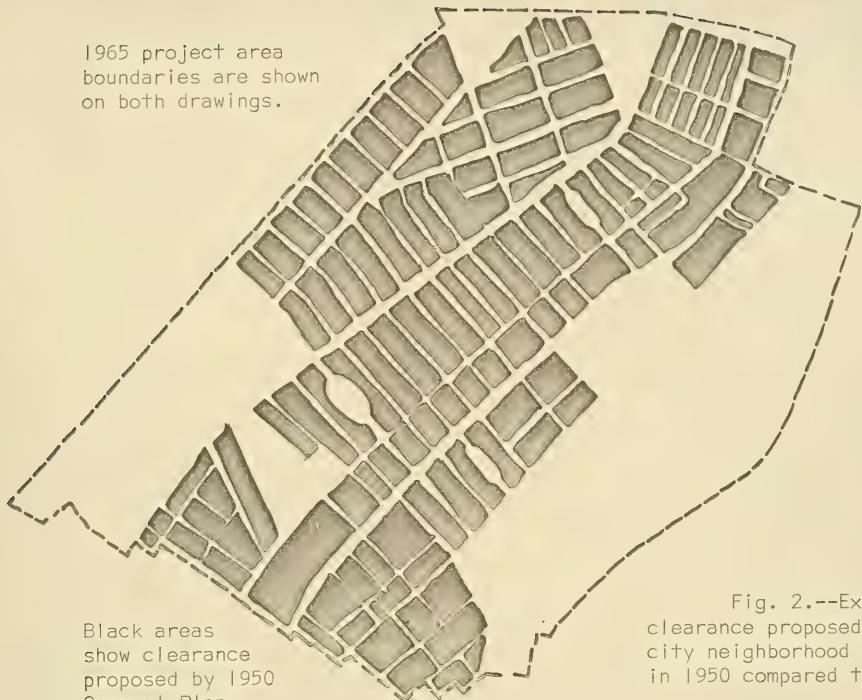
²A distinguished committee criticized the new Zoning Code for permitting random future towers to exceed present Commonwealth Avenue building heights. See Committee for Commonwealth Avenue, Report of the Committee for Commonwealth Avenue, (Boston: The Committee, January, 1963).

TABLE 3
1950-1966 TRENDS IN PERCENTAGE OF CLEARANCE, BOSTON
URBAN RENEWAL PROGRAM

Project	Date of Planning Grant	Cumulative % Clearance Planned	Gross Project Size (Acres)	Clearance (Acres)	% Clearance by Project
New York Streets	1950	92.3%	24.2	22.3	92.3%
West End	1950	95.3%	48.5	46.9	96.8%
Washington Park	1960	36.5%	502.0	111.5	22.3%
Government Center	1960	35.3%	60.5	43.8	72.5%
North Harvard	1961	35.3%	9.3	3.4	36.6%
Charlestown	1962	33.0%	519.3	166.4	22.3%
South End	1962	28.5%	616.0	106.0	17.2%
Downtown Waterfront	1963	29.8%	104.5	60.3	57.6%
Central Business District	1963	29.1%	245.0	58.2	23.7%
South Cove	1964	28.6%	96.5	17.8	18.4%
Fenway	1965	24.3%	507.3	29.0	5.7%
Campus High School	1966	25.2%	129.2	57.3	44.3%
Total			2,862.3	722.9	

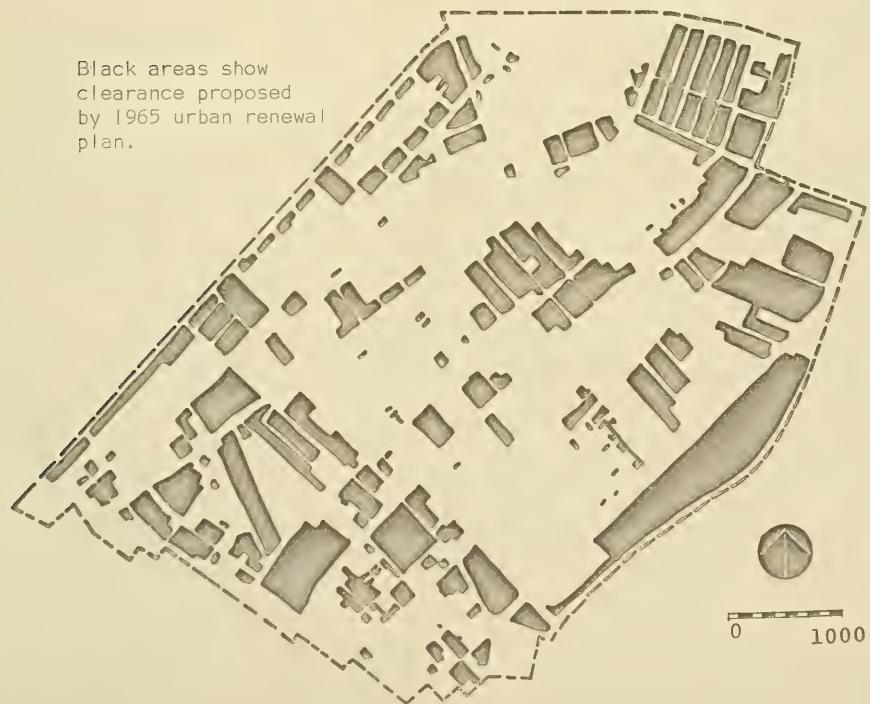
Source: BRA and HUD records. Clearance acres varies during project execution, as property owners choose between acquisition and rehabilitation.

1965 project area boundaries are shown on both drawings.



Black areas show clearance proposed by 1950 General Plan.

Fig. 2.--Extent of clearance proposed for inner-city neighborhood (South End) in 1950 compared to 1965.



Black areas show clearance proposed by 1965 urban renewal plan.

0 1000'

as follows:

COMPARISON OF ACTUAL AND ZONING CHARACTERISTICS OF
THREE BOSTON INNER CITY ROW-HOUSE AREAS,
ACCORDING TO THE BOSTON ZONING CODE
EFFECTIVE DECEMBER 31, 1964

	Beacon Hill	Back Bay	South End	
Zoning District	H-2-65	H5 ^a	B4 ^b	H2
Front Yard Required by Zoning	20'	15'	None	20'
Actual Front Yard	0' most streets, some 7', a few 20'	20'	20'	Varies 0'-15' by street
Maximum Height by Zoning	65'	None	None	None
Actual Height	40'-90'	50'-90'	50'-90'	40'-75'
Maximum FAR by Zoning (with bonuses)	3.0	9.0	7.0	3.0
Actual FAR	About 4.0	About 3.0	About 3.0	About 2.0

^aBeacon Street, Marlborough Street, Commonwealth Avenue

^bNewbury Street from Dartmouth Street to Hereford Street

The Beacon Hill and Back Bay Commissions, in fact, control the razing of existing buildings, and assert authority to control the dimensions of proposed buildings within their jurisdictions. Their rulings are binding when more restrictive than the Zoning Code.

The language of the historic district enabling acts is vague on whether building dimensions, or only the surface treatment of buildings can be controlled. Control extends to "the architectural style and general arrangement of such portion of exterior of a structure as is designed to be open to view from a public way including kind, color, and texture of the building material of such portion and type of all windows, doors, lights, signs and other fixtures appurtenant to such portion." The historic district commissions would have more confidence in their decisions over building dimensions if the zoning maps furthered retention rather than change in building form. This point was made by John Codman, Chairman of the Beacon Hill Commission, in his annual report of 1964:³

The experience gained by the cases involving 70-72 Mount Vernon Street, 27-29 Chestnut Street and the Charles Street Garage in 1963, and 11-27 Bowdoin Street in 1964 makes it quite evident that to carry out the purposes of the Act, the Commission cannot allow new construction which creates masses inappropriate with neighboring structures, even though they may be within the zoning limits of height and land coverage. Control of mass is equally important as control of design in the preservation of an Historic District.

The H-2-65 District regulations were drafted after the creation of the Beacon Hill District, and represent a compromise between the 1950's policy of building replacement, and the 1960's policy of building preservation. On Newbury Street in Back Bay, and in South End no historic districts are in effect. Building permits are being issued in conflict with the 1960's policy of retaining the traditional building forms.

³City of Boston, Annual Report of the Building Department for Year Ending December 31, 1964 (1965), p. 19. Hereafter this is cited as Boston Building Department Annual Report for 1964.

Other rowhouse areas in North End, Charlestown and South Cove are in the same position.

When the Zoning Code is more restrictive than the existing building form of a rowhouse area, whether or not there is an historic district in effect there, buildings can be built to follow the existing building form only with variances from the Zoning Code. This problem was well stated by architect Huson Jackson in a letter to the Zoning Commission supporting code amendments which would relieve urban renewal developers of many dimensional requirements of the Zoning Code:

The second reason for my support is the experience which this firm has had on two housing projects in urban renewal districts, one in the South End and the other in Charlestown. In both cases the strict application of the present zoning rules will not permit one of the major objectives of the urban renewal plans to be achieved; namely, the preservation and extension of the character of the neighborhoods in which the projects will be built. In both cases appeals will be necessary in order to obtain zoning permission to build projects which will harmonize and enhance existing neighborhood patterns.⁴

Lewis Mumford in 1957 spoke out against skyscrapers and in favor of two story buildings in the center of Boston:

The economic health of Boston requires not more expressways and parking garages and not a dozen new skyscrapers. It would be much more favorable to the life of Boston if, right in the heart of the city, between Tremont and Washington Streets, there could be a new area for shopping, with two-story buildings, like those of the famous Lijnbaan in Rotterdam, with a broad pedestrian mall, banks of flowers, rows of trees, and every facility for eating, shopping and leisurely enjoyment.⁵

⁴Letter from Huson Jackson of Sert, Jackson & Associates to Boston Zoning Commission, August 8, 1967.

⁵Boston College, College of Business Administration, Proceedings of the 1957-1958 Series of Citizens Seminars on Problems of Boston and the Metropolitan Community. (Boston, 1958), p. 40.

Here are some explanations for the policies of the 1960s favoring preservation and rehabilitation for the older parts of the city rather than clearance and replacement as urged by Boston planners in 1950-1954. The residents of the City have learned to resist clearance projects. West End residents generally did not comprehend what was happening to their neighborhood, and did not know how to communicate with public officials planning wholesale clearance there.⁶ Subsequently, neighborhood resistance to clearance has affected public intentions in Charlestown, North Harvard, and South Boston. Residents in all Boston neighborhoods are now aware that their resistance to substantial clearance will be effective.

The attitude of planners has changed towards the older parts of the city. Areas such as the West End and North End are respected as ethnic urban villages which perform important mobility functions for their residents.⁷ The value of a high amount of social interaction along city streets, even between persons who only know one-another by sight and are not associated by blood or friendship, has been popularized by Jane Jacobs⁸ and Harvey Cox.⁹ Many architects prefer the powerful spatial configurations and man-made places which surround residents in

⁶Herbert J. Gans, The Urban Villagers, (Cambridge: MIT Press and Harvard University Press, 1960), pp. 288-298.

⁷John R. Seeley, "The Slum: Its Nature, Use and Users," Journal of the American Institute of Planners, XXV, No. 1 (Feb. 1959), 7.

⁸Jane Jacobs, The Death and Life of Great American Cities, (New York: Random House, 1961).

⁹Harvey Cox, Secular City, (New York: MacMillan Co., 1965).

rowhouse areas. Recent housing and campus designs duplicate these configurations even when there is plenty of land.¹⁰ Morton Homes in Philadelphia show respect both for housing needs of residents of the area, and for a traditional building configuration. These are public housing row house units fitted among existing houses. See Figure 3, p. 51.

Massive clearance of dwellings is avoided in the 1960s, because this violates an urban renewal policy of providing good housing at rents they can afford to residents forced to move. Massive clearance of old housing in Boston would mean either (1) replacement with public housing or (2) replacement with housing that persons displaced cannot afford.

Large public housing projects are no longer undertaken in Boston. It has been demonstrated¹¹ that Boston projects of the 1940s and 1950s make occupants too visible and cause social segregation. New rental housing built within urban renewal projects using large Federal mortgage guarantees are rented for as little as seventy-five dollars a month for a one-bedroom unit, but this is still more rent than many who would be dispossessed by a massive clearance program could pay. Therefore clearance is constrained by vacancies available within present public housing projects, and within the City's stock of low cost sound housing.

Through these explanations run a common theme, that urban buildings and neighborhoods exist for the benefit of their residents and

¹⁰Oscar Newman, "New Campus," Architectural Forum, CXXIV, (May, 1966), 30.

¹¹May Boulter Hipsham, Public Housing at the Crossroads: the Boston Housing Authority, (Boston: Citizens Housing and Planning Association, 1967).





Philadelphia Housing Association

Fig. 3.--Morton Homes in Philadelphia showing public row housing units fitted among existing houses.

users. One variation of the theme is a respect for the typical resident's preference to stay rather than move. Another variation is respect for the social community which arises in certain areas because of the common ethnicity of residents, or because the building configuration results in many interpersonal contacts.

A control process which sets out to change the form of buildings in a city can work no faster than the rate at which buildings are being replaced there. From 1959-1965 buildings remained surprisingly constant in number in Boston, and the rate of replacement was low. Table 4 below. Total buildings changed from 142, 186 in 1959 to 142, 528 in 1966. New buildings were erected at the rate of 825 per year, and were razed at the rate of 776 per year. At an annual rate of 142, 186/825 it would take 173 years to replace the entire building stock. Given four buildings in a row, if one is replaced each 43 years by a taller building or one with a different setback, it would be 129 years or to the year 2097 before the new building form would dominate. By that time, the zoning control itself would probably have been amended in a comprehensive way three times, considering Boston's experience with a major zoning system change in 1924, and another in 1965. More likely, the entire zoning institution will have been abandoned for something better by that time. This suggests that private development occurring in scattered locations guided by a new zoning code cannot transform the size of a group of buildings in a reasonable time. Yet to affect such a gradual transformation is a major objective of the new Zoning Code.

TABLE 4

1959-1966 RATE OF BUILDING REPLACEMENT IN BOSTON

Year	Total New Buildings Erected during Year	Total Build- ings Raz ed during Year	Net Gain or Loss	Total Buildings at Beginning of Year
1966				142,528
1965	413	- 810	- 397	142,925
1964	2,111	-1064	+1047	141,878
1963	834	-1405	- 571	142,449
1962	656	- 459	+ 197	142,252
1961	574	- 460	+ 114	142,138
1960	613	- 619	- 6	142,144
1959	575	- 617	- 42	142,186
1959-1966	5776 (+825/year)	-5434 (-776/year)	+ 342 (+49/year)	

$$5,766 \div 7 = 825 \text{ new buildings/year}$$

$$825/142,186 = .58\% \text{ replacement/year}$$

or $142,186/825 = 173$ years to replace entire building stock

Data derived from Boston Building Department Annual Reports.

The 1924 zoning plan attempted to radically change the building form of the Park Square area between Boylston Street, Washington Street, Tremont Street and Arlington Street.

Of about 600 buildings in this area, only five were ten stories or higher in 1924. Two and three story buildings were the basic texture, with a scattering of five to eight story buildings. A 1924 portrayal of the land value gradient showed this to be a high value area, because it is so central. From 1924 until 1965 the area was, therefore, zoned to permit 155 foot buildings, the tallest allowed anywhere in the City.

From 1924 to 1967 less than half dozen buildings of ten stories or more were added to the area. Two and three stories was more typical of 1924-1967 construction there. About 20 percent of the buildings were removed altogether in this period for private and commercial parking lots. The Bay Village residential streets in the area were invaded by businesses, which was permitted under the 1924-1965 law. In 1965 most of the area was declared blighted and designated as the South Cove Urban Renewal Project. This area is fair game for criticism of lack of zoning effectiveness because the 1924 zoning report singled it out for illustration of the use, height and area studies on which the 1924 zoning law was based.¹²

Scattered investments in tall buildings made there since 1924 were misguided, considering that under the influence of the 1924-1964 zoning law the area did not evolve from a small building area into a field of skyscrapers, and indeed there was little replacement of the

¹²Zoning for Boston (1924).

hundreds of small deteriorating buildings with new buildings. Over-zoning of the area in permitted floor area from 1924-1964 may have contributed to its stagnation by inflating land values and discouraging land sales for new building development.

The 1965 zoning maps for this part of Boston lowered the permitted ratio of floor area to lot area from about 15 to about 4. Four small residential blocks in the Bay Village section were changed from business to residential zoning, and the permitted floor area ratio was lowered there to 2. Thus the 1965 zoning laws in effect gave up the abortive effort of the 1924-1965 zoning map to radically increase building density in this area. The 1965 zoning law brought the permitted and existing building orders closer together. Much of the area was again rezoned in 1966 as part of the South Cove Urban Renewal Project¹³ to a higher permitted building density than then existed there. This rezoning is coordinated with local and U.S. investment in land assembly, clearance and public works, and there will be urban renewal controls over assembled parcels of land. With such a deliberate public effort the area will be changed from a small building to a large building environment. Zoning alone failed to do this..

Alterations and new buildings erected in the Washington Park Urban Renewal area are zoned to obey the idealized building gradient of the 1950-1954 studies, rather than the building pattern which evolved in the area from colonial times to 1950. The objective of the Zoning

¹³Boston Redevelopment Authority, Urban Renewal Plan, South Cove Urban Renewal Area (Boston: Boston Redevelopment Authority, June 1965).

Code in Washington Park is to stimulate the gradual replacement of the pre-1950 buildings in the area with open-style buildings having more space around them. But the 1963 Urban Renewal plan¹⁴ for the area seeks to encourage the retention and rehabilitation of most buildings there. It is therefore an implication of that Urban Renewal Plan that new buildings be sympathetic in yard dimensions and density with existing buildings in the area. The Zoning Code is in conflict with that urban renewal objective regarding new buildings. Many property owners seeking building permits in that area in order to rehabilitate their homes cannot receive building permits without appealing to the Board of Appeal for zoning variances. This means a fee of twenty-five dollars, sometimes legal fees, and takes from one to three months.

This is another case of law from the 1950's obstructing policies of the 1960s. Figures 4-7 which follow depict actual random measurements of lots and buildings in the Washington Park rehabilitation area, and compare these to the alien zoning standards in effect there.

In 1965 and 1966, the first two years of administration under the new Zoning Code, 32 percent of all new dwelling units receiving building permits were in buildings which would when built exceed the permitted floor area ratio for their location in the City. There were 1498 dwelling units located in 54 new buildings in this building size and

¹⁴Boston Redevelopment Authority, Urban Renewal Plan, Washington Park Urban Renewal Area (Boston: Boston Redevelopment Authority, 1963) p. 5, and plate entitled "Property to be Acquired," attached to that plan. Cited hereafter as B.R.A., Washington Park Plan, (1963).

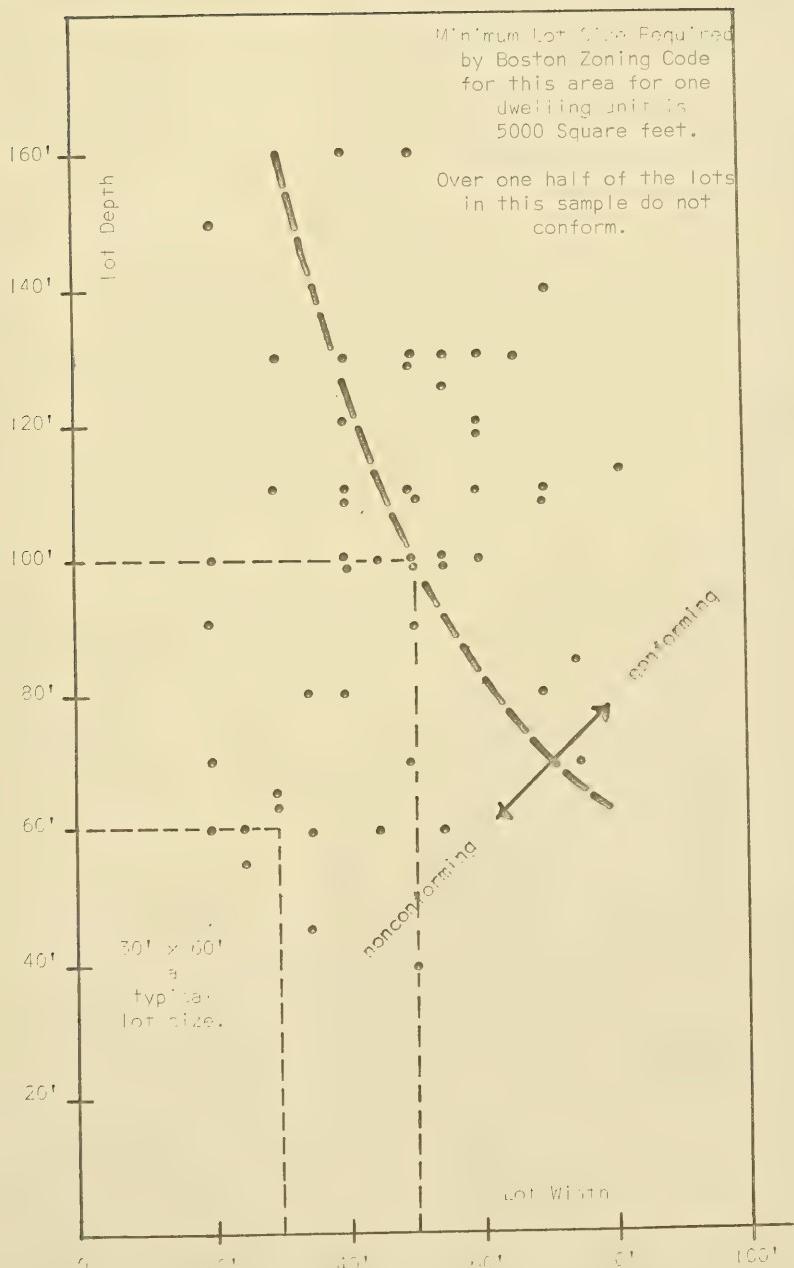
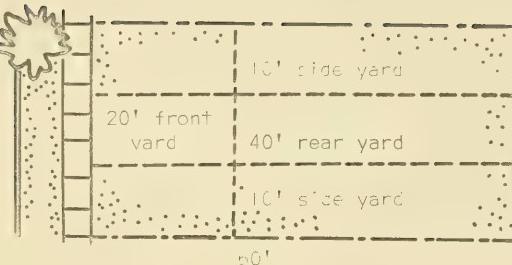


Fig. 4.--Sample of Lot Dimensions, Rehabilitation Housing Areas, Washington Park Project Area, 1965.

If

R.I.

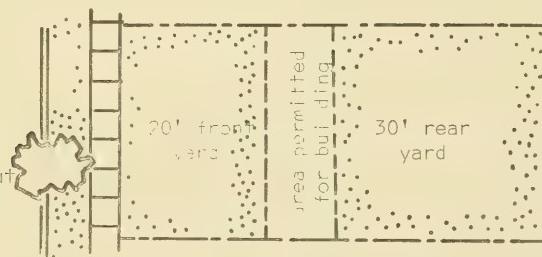
No dwelling units permitted without Board of Appeal variance from yard requirements.



If

H.I.

No dwelling units permitted without Board of Appeal variance from yard requirements.



Residential portions of the project area are actually zoned R.8 and H.I. R I and J I Districts (below) are proposed custom-written amendments to the Zoning Code prepared in 1965 to carry out the urban renewal plan rehabilitation objectives. Sample measurements reported by Figures 5-8 were made in the study leading to the R I and J I proposals.

If

R.I. or J.I.

One dwelling unit or two small dwelling units permitted as shown.

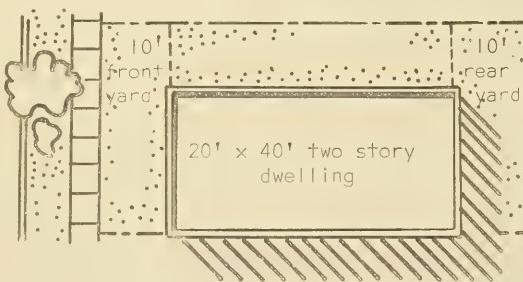


Fig. 5.--Effect of New Zoning Code on 30' x 60' Lot: A Typical Washington Park Area Lot Size.

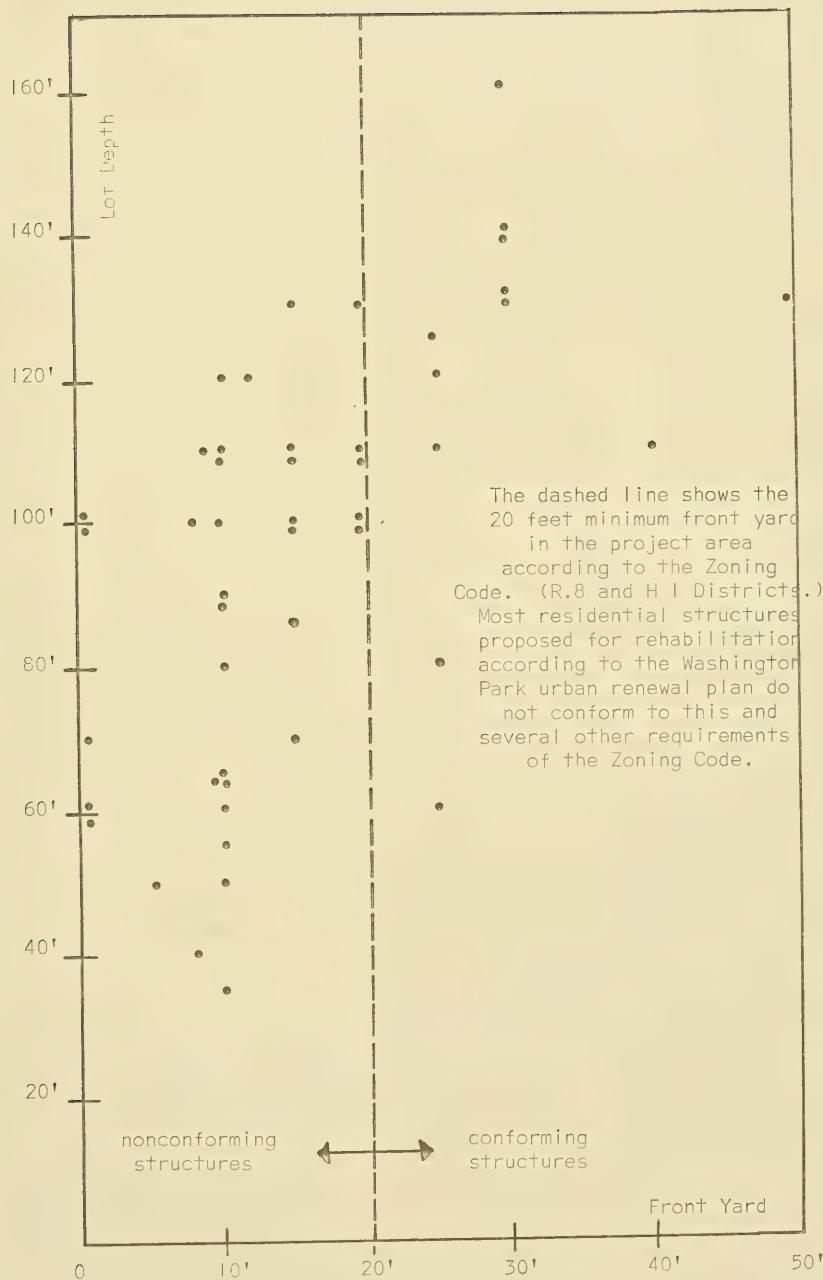


Fig. 6.--Zoning Requirements Compared to Sample of Front Yard v. Lot Depth, Rehabilitation Housing Areas, Washington Park Project Area.

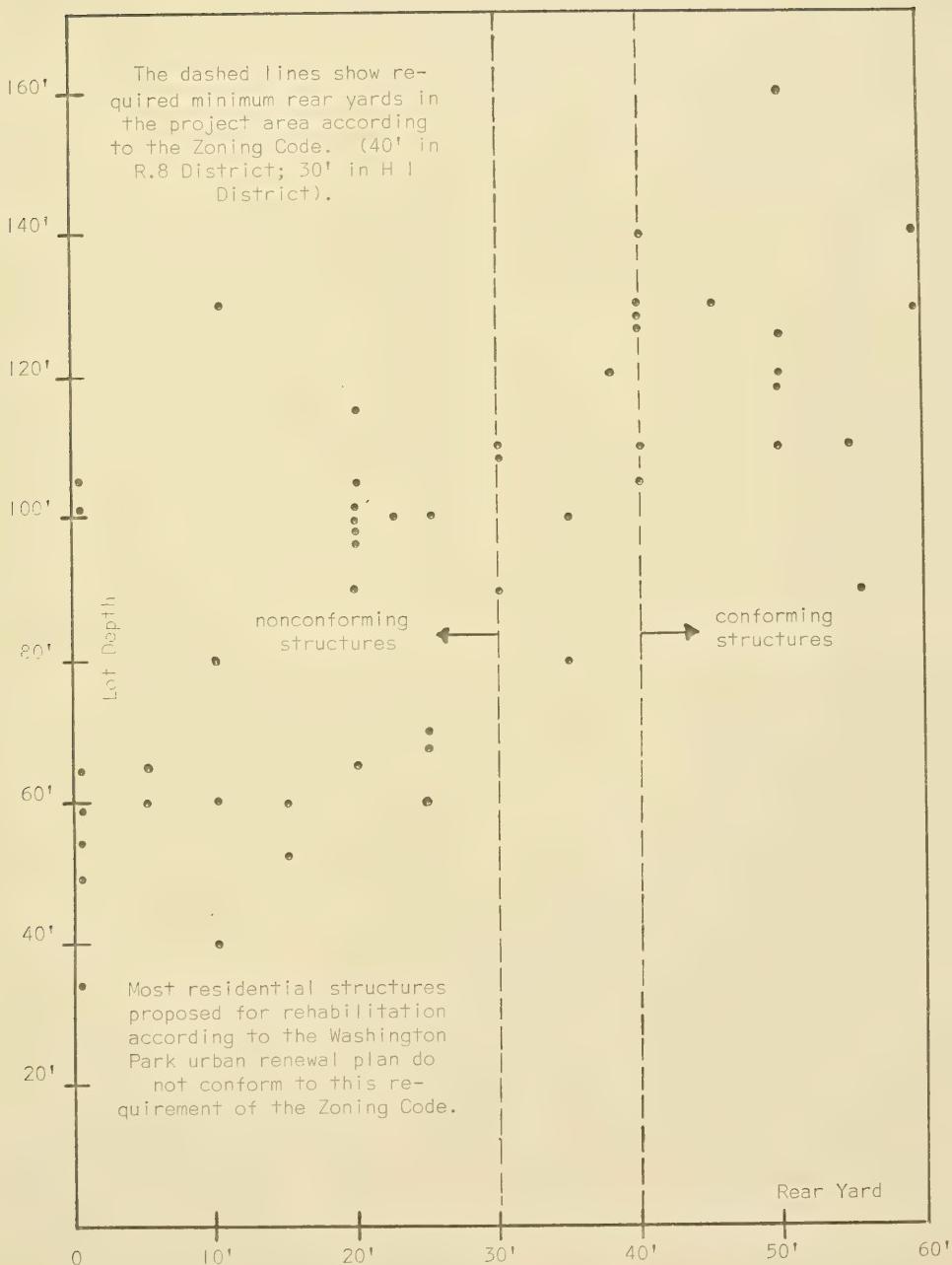


Fig. 7.--Zoning Requirements Compared to Sample of Rear Yard v. Lot Depth, Rehabilitation Housing Areas, Washington Park Project Area.

location insurrection.¹⁵ Most of these 54 buildings are being built by different developers in all parts of the city. The developer of each building was refused a permit because the proposed building violated maximum permitted floor area ratio for that location. Each developer then appealed to the Board of Appeal, claiming "circumstances or conditions peculiar to such land or structure but not the neighborhood . . . such that the . . . code would deprive the appellant of the reasonable use of such land or structure."¹⁶ After hearing, each developer was granted a building permit. Other would-be developers of out-size buildings got as far as the Board of Appeal, where they were denied a building permit.

The most visible buildings being erected in Boston are the minority whose estimated cost is more than 100,000 dollars each. There were 132 such buildings receiving building permits in Boston in 1965. This was 2.2 percent of the 5899 buildings erected or altered that year. The 132 largest buildings were more visible than all the smaller buildings erected, because the 132 larger buildings represent 85 percent of the estimated cost of all buildings receiving permits in 1965. There were 5767 smaller buildings receiving building permits that year. These represent only 15 percent of total construction cost for that year.

¹⁵The data is from the analysis of 1965-1966 Board of Appeal cases described further in Chapter VI and from Boston Building Department Annual Report for 1965, and Boston Building Department Annual Report for 1966.

¹⁶Zoning Code (1965), Sec. 7-3(a) p. 13, Massachusetts, Acts of 1960, c. 652.

Of the 132 buildings having estimated cost of 100,000 dollars or more each, 53 received building permits only after appeal to the Board of Appeal. Appeals for 8 buildings were needed from violations of use requirements, while appeals for 45 buildings were needed from violations of building dimension or off-street parking requirements. These 45 averaged almost 4 violations of dimensional or parking requirements each. These 45 buildings representing 29 percent of all construction (by cost) granted permits that year are visible evidence that the grading by building size as planned in the 1950s is not working well in the 1960s. The following distribution shows that these large buildings are scattered all over the city.

LOCATION OF 45 BOSTON BUILDINGS HAVING ESTIMATED COST
OF OVER \$100,000 EACH WHICH RECEIVED BUILDING PERMITS
IN 1965 AFTER APPEAL TO THE BOARD OF APPEAL FROM
VIOLATIONS OF DIMENSIONAL AND PARKING REQUIREMENTS

Miles from State House Dome	Number of Buildings
0 - 1.0	8
1.1 - 2.0	9
2.1 - 3.0	8
3.1 - 4.0	5
4.1 - 5.0	5
5.1 - 6.0	3
6.1 - 7.0	3
7.1 - 8.0	3
8.1 - 9.0	0
9.1 - 10.0	1
	45

More of these 45 large-building exceptions to the building size gradient sought by the Zoning Code are located within 0-3 miles of the Hub than within 3-6 miles. This could mean there is some new building size gradient now influencing building construction. If there is such a

gradient there are enough exceptions to it in the inner-city historic districts and in the new towers visible all over greater Boston that the gradient idea is no longer acceptable as a basis for zoning.

The most visible violation of the zoning gradient is the Prudential Tower, erected over a mile west of the Hub to a height of 750 feet in a 155 feet zoning district, according to a building permit granted in 1959.

Another visible violation of the zoning ideal is the Jamaicaway Tower, erected 3.6 miles from the State House Dome on a heavily traveled parkway to a height of 268 feet in a zoning district having a 40 feet height limit. Both Prudential and Jamaicaway Towers were granted building permits despite zoning violations because they were developed as urban redevelopment corporation projects on "blighted open land" sites. The B.R.A. statutory power to except such a corporation from specific zoning controls was invoked.¹⁷

The prominence of the Jamaicaway Tower rising high in the leafy, western stretches of the Boston skyline are accentuated by such a real estate page newspaper advertisement as this:

You and your family are cordially invited to live in a new and striking 30 story tower (New England's tallest apartment structure) with a 50-mile view of eastern Massachusetts.

Your new home will be surrounded by four acres of beautifully landscaped high ground where you will enjoy a swimming pool, tennis court, putting green, exercise room, sauna bath, playground and garden.

Kenmore Square and Boston Common are only minutes away. But, let our complimentary, frequent limousine service take you to the MBTA and pick you up again.

¹⁷This power was upheld in Opinion of the Justices, 168 NE² 858, 875 (Mass., 1960).

A 422 dwelling unit complex on Huntington Avenue 2.5 miles from the State House Dome, called the Charlesbank Apartments,¹⁸ having a 240 foot tower and massive profile compared to surrounding low buildings around it was granted a building permit in 1961 despite conflicts with a zoning height limit. Again, the statutory power of B.R.A. to except an urban redevelopment corporation from zoning was invoked.

Architect Jose Luis Sert in an interview in 1964¹⁹ concerning the new scale of Boston describes towers of about 200 feet as a good compromise between contemporary elevator technology, and the traditional scale of Boston. The good examples he mentions are all outside of central Boston: new academic towers at Boston University, MIT and Harvard Square. He declares the 750 foot high Prudential Tower to be a Chicago or New York style of building which is out of scale with Boston.

Conventional zoning including Boston's new Zoning Code attempts to impose the same maximum dimensional controls on adjacent buildings. Zoning districts are made as large as possible, to minimize imposing different restraints on neighboring lot owners. Differences between building dimensional restraints on two sides of a zoning district line are generally slight. A district with a maximum permitted floor ratio of n will be typically surrounded by districts with maximum floor area ratios of n+1 and n-1. Both the Post War fact studies showing an emerging building gradient and the free market ideology of competition between

¹⁸Joan E. Goody, New Architecture in Boston, (Cambridge: MIT Press, 1965), p. 54.

¹⁹Jose Luis Sert, "New Buildings in Old Boston," in Forum, Boston Junior Chamber of Commerce, II, No. 2 (January, 1964), 6.

buildings to produce a peaked building form dictate that nearby buildings should be nearly alike in size relative to lot area.

There is a trend in the 1960s to designate one lot for a high building and the next for a low building by translating complex social, aesthetic and environmental objectives into building form. This is typical of urban renewal plans, and is a tenet of contemporary architectural and urban design practice. Ordinance amendments in 1965 to permit towers on specific Commonwealth Avenue corners, the site plan for the Castle Square housing group, and the numerous urban renewal plans show the practice of the 1960s of mixing high and low buildings.

Building heights along Commonwealth Avenue are controlled both by the H-5 Apartment District of the Zoning Code, and the Park Frontages Ordinance.²⁰ The H-5 Apartment District in effect limits heights to 165 feet, and Park Frontages Ordinance limits height to 70 feet. The more restrictive applies.

A 1965 revision of the Park Frontages Ordinance retained the basic 70 feet height limit along Commonwealth Avenue, but designated corner lots where apartment towers of prescribed dimension would be permitted. These towers are intended to increase the number of year-around residents of the Back Bay area, thus bringing it into closer balance with the increasing student population there. Such visible and prestigious towers are also expected to stimulate rehabilitation of the

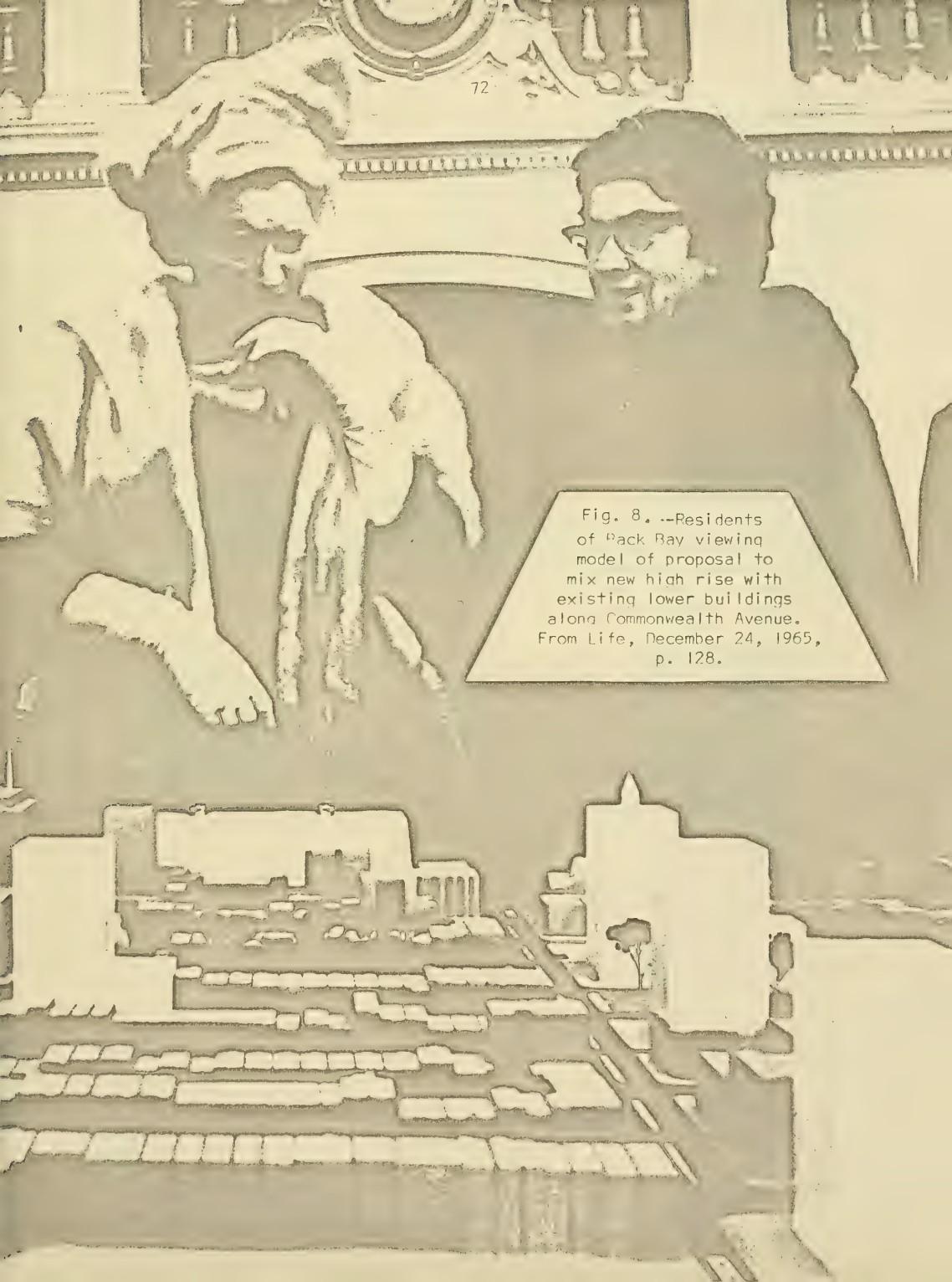
²⁰City of Boston, Ordinances of 1965, c. 8 Concerning Restrictions on Park Frontages (Commonwealth Avenue). The Park Frontages ordinance controls when more restrictive than zoning. Leventhal v. Buehler, 191 NE² 128, (Mass., 1963).

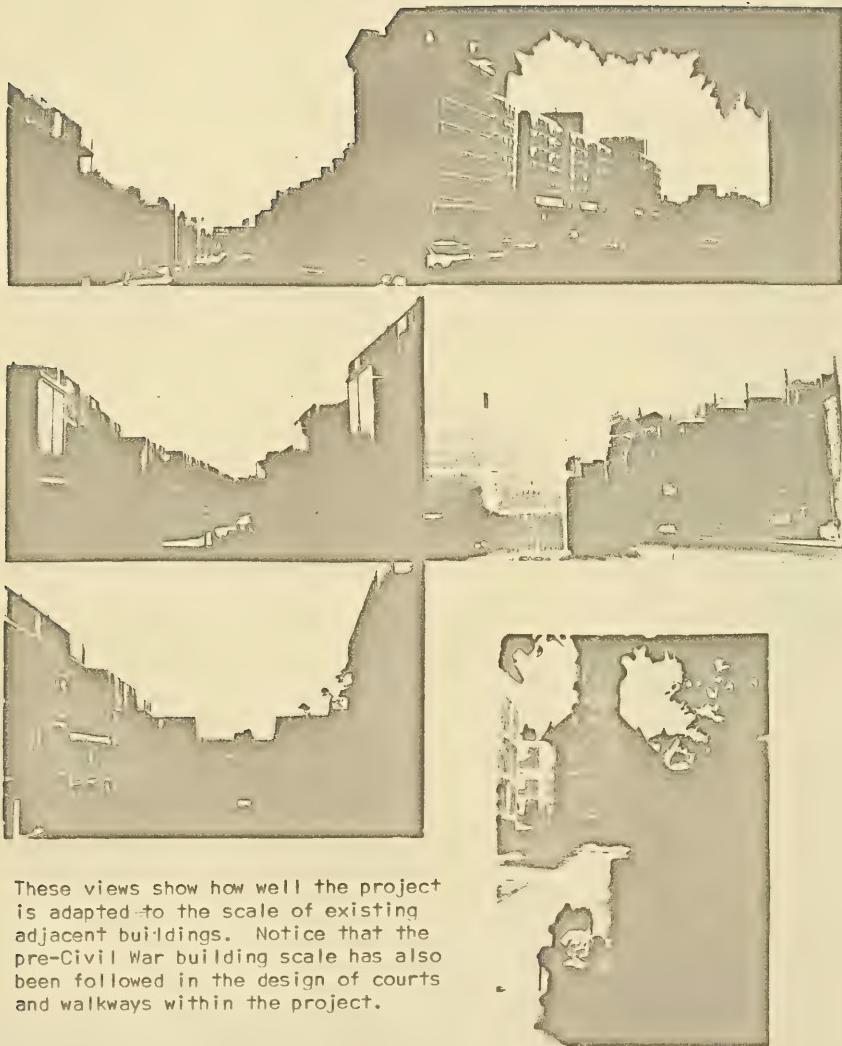
surrounding lower buildings. Corners were selected to make cross streets more visible, and because of the additional open space available at the intersections. Towers were located on the west sides rather than east sides of the four intersections at Arlington, Berkeley, Clarendon and Dartmouth Streets so that morning sun would reach the intersections. See Figure 9 below.

Castle Square, which is 602 dwelling units, plus commercial, of urban renewal construction just 3/4 miles from the center of Boston, has a floor area ratio of about 1.0 compared to a permitted floor area ratio of 2.0 under the new Zoning Code. (A floor area ratio of about 15 would have been permitted under the 1924-1964 zoning law at this location.) The 14.6 acre Castle Square development has four story brick row buildings along two of its outside edges. These are in scale with the pre-Civil War buildings which surround it. On a third edge are seven story towers above commercial space. The fourth edge (parallel to the Massachusetts turnpike) is a parking garage. In the interior of the development there are off-street parking bays, and recreation spaces.

It is not easy to characterize Castle Square. Most of its buildings are row houses, following the pre-elevator period examples of the immediate neighborhood. Yet it contains some elevator buildings. The off-street parking bays adjacent to dwelling units are a suburban convenience. The Castle Square design denies that buildings in the center of the city should be tall, with a high ratio of floor area to lot area. It is a leading example of intermingling high and low buildings, and commercial with residential uses of land. See Figure 9 below.

Fig. 8. --Residents of Back Bay viewing model of proposal to mix new high rise with existing lower buildings along Commonwealth Avenue.
From *Life*, December 24, 1965,
p. 128.





These views show how well the project is adapted to the scale of existing adjacent buildings. Notice that the pre-Civil War building scale has also been followed in the design of courts and walkways within the project.

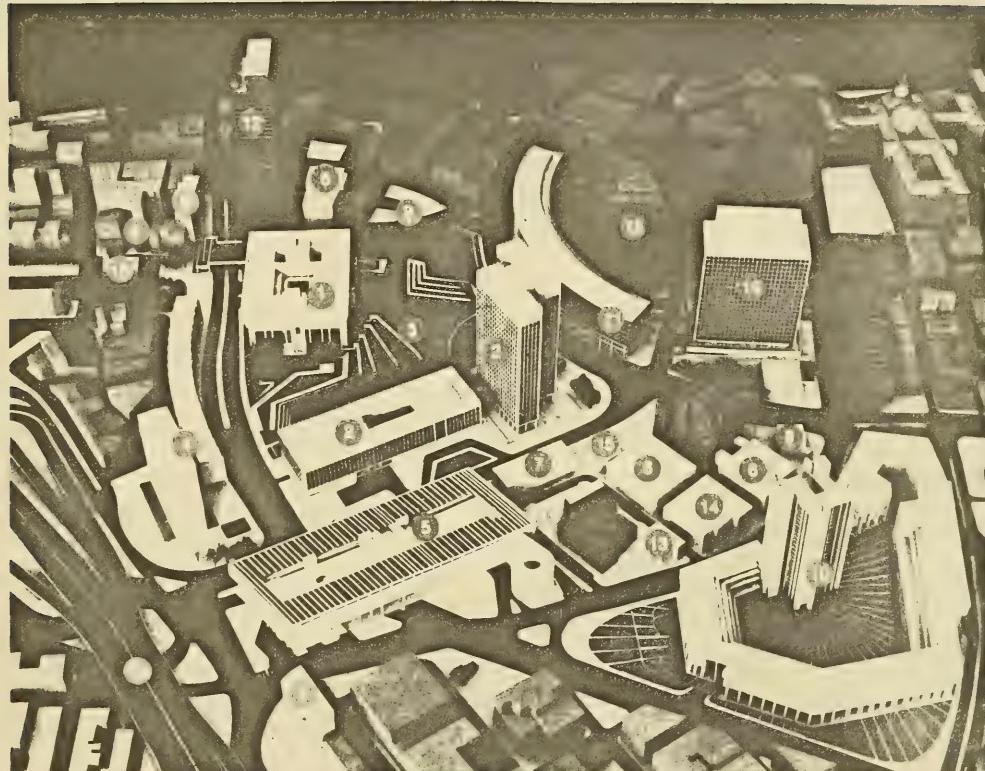
Fig. 9.—Castle Square Housing Development in Boston's South End Urban Renewal Project.

Boston's redevelopment planning abounds with high-low building mixtures. In Government Center there is the 26 story John F. Kennedy Federal Office building surrounded by three lower buildings and open plazas. At another corner of the Government Center three architecture firms tried to coordinate the designs of three state office buildings, and chose a single building called "a stake with a tail", having a tower connected to a lower building which wraps around a plaza.²¹ See building 10, Figure 10 below.

The Washington Park project proposes towers for the elderly adjacent to new buildings whose heights were limited to one and two stories. At the Southeast corner of the Boston Common a "hinge block" of high and low buildings with a pedestrian route diagonally through the center is planned. (The block will act as a hinge between the retail and theater districts.) The South End, South Cove and Charlestown plans each propose complexes of high and low buildings.

This chapter has documented how the 1950-1954 zoning ideal of a cone-shaped city skyline made of buildings which decrease in size with distance from the Hub was distorted by 1954-1967 building programs and trends. Inner-city buildings were to be totally cleared and replaced with newer buildings, according to 1950-1954 plans. Total clearance as a program has been changed to partial clearance in the 1960s, leaving many areas with new zoning maps ill-fitted to their traditional building patterns. The zoning gradient calls for large, new buildings in the center of the city, but two inner city neighborhoods, Beacon Hill and

²¹ Architectural Forum, CXX (June, 1964), 92.



GOVERNMENT CENTER Proposed New Construction

- 1 City Hall (New)
- 2 John F. Kennedy Federal Building (New)
- 3 Government Center Plaza (New)
- 4 Motor Hotel (New)
- 5 Parking Garage (New)
- 6 Private Office Building (New)
- 7 Police Station (New)
- 8 Chapel (New)
- 9 Sears Crescent (Rehabilitated)
- 10 State Service Center (New)

- 11 One Center Plaza (New Private Office Building)
- 12 20 State Street (New Private Office Building)
- 13 Jewish Family and Children's Service Building (New)

Boston Redevelopment Authority

- 14 Post Office (New)
- 15 30 Hawkins Street (Renovation)

Other Buildings Shown

- 16 Faneuil Hall
- 17 State House
- 18 Court House
- 19 State Office Building (New)
- 20 Central Artery

Fig 10. --Government center urban renewal project showing new construction.

Back Bay, have special legislation to preserve the old, small building orders there.

Further out from the Hub in the Washington Park area the zoning code sought to stimulate gradual replacement by the random workings of the private building market of crowded, obsolete buildings by new buildings having less density and generous yards. Such zoning conflicts with the 1960's program of rehabilitation of existing structures there.

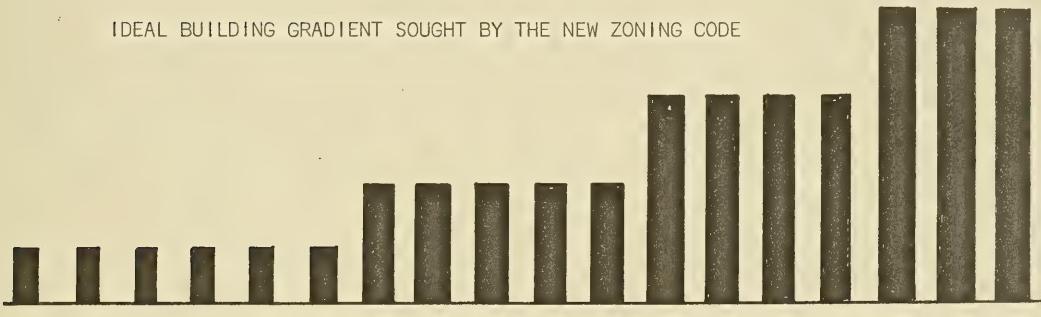
About a third of the new buildings erected after 1965 under the new Zoning Code exceed the dimensional requirements of the zoning building gradient. The Zoning Board of Appeal permitted their construction. Several enormous towers were erected by urban redevelopment corporations who relied on their legislative immunity from zoning to penetrate the ideal building gradient.

Buildings adjacent to one-another are about the same size, according to the zoning building gradient. Large buildings are permitted only in districts miles away from small building districts. Even this dogma fell during the 1960s, as high-low building compositions were achieved or sought through urban renewal planning, or, along Commonwealth Avenue, through City Council ordinance.

The zoning gradient encompasses all buildings in the city in one, grand behavioral theory of competition. A building owner is controlled in his desire to exploit space by whatever building behavior is normal - that is, competitive but not rapacious - for that distance from the Hub. Zoning purports to have codified this single, natural, inevitable law of building behavior. Such a demanding theory is weakened by even a single

exception. In the face of so many exceptions the building gradient theory must be abandoned as anachronistic. What has happened is illustrated by the ideogram below:

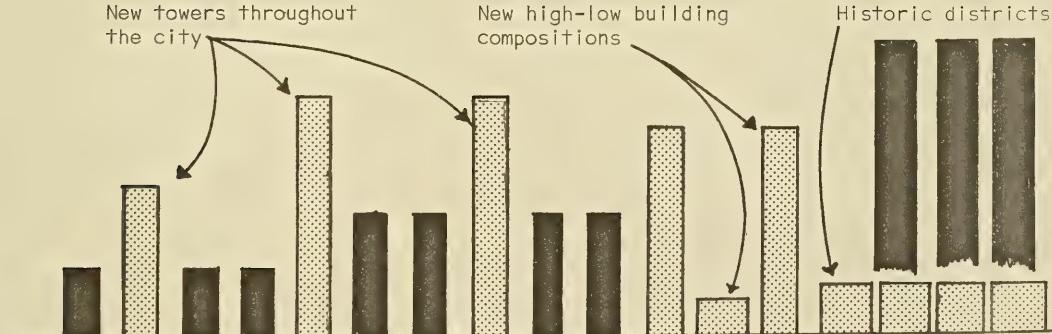
IDEAL BUILDING GRADIENT SOUGHT BY THE NEW ZONING CODE



New towers throughout
the city

New high-low building
compositions

Historic districts

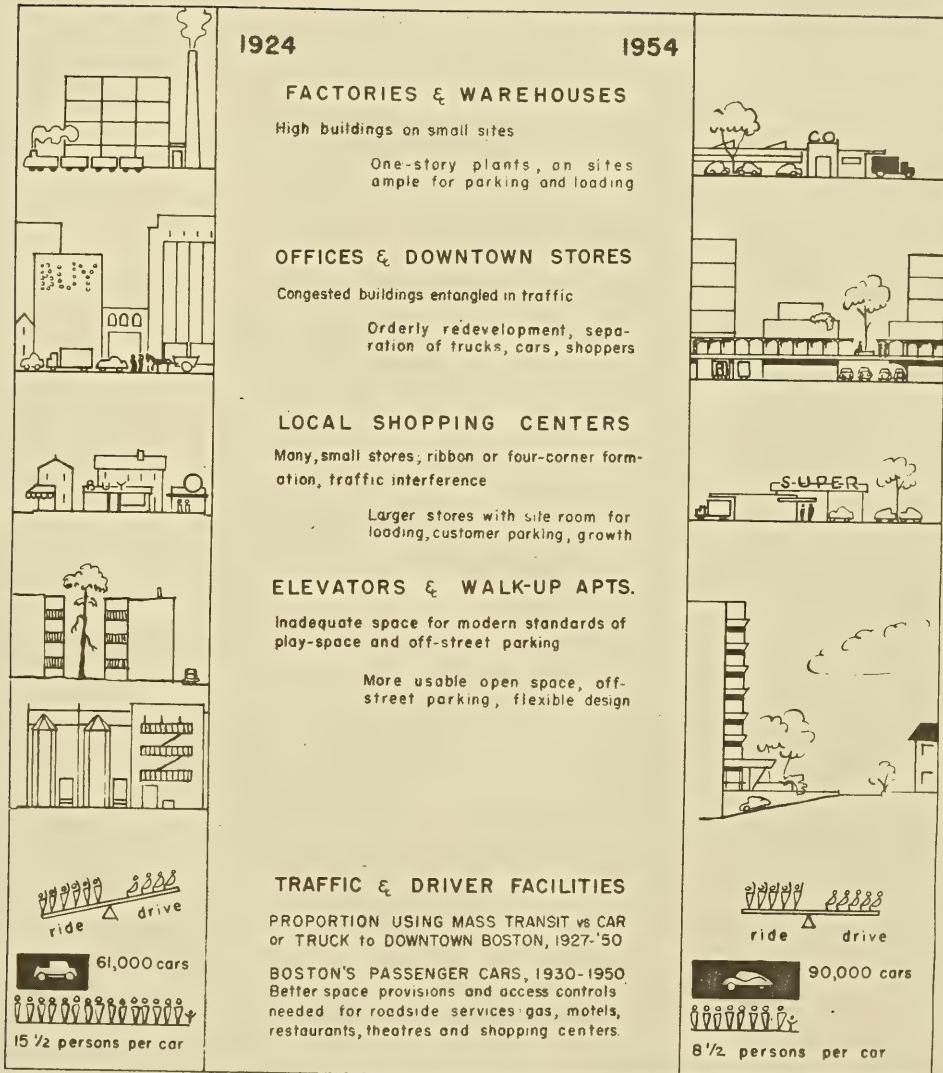


1960s EXCEPTIONS TO THE IDEAL BUILDING GRADIENT

The nature of the individual building changed in Boston planning theory from the 1950s to the 1960s, as demonstrated by how buildings were represented in documents of these two periods. Zoning Policies (1953) shows buildings as models of then-contemporary practice: the one-story manufacturing plant; the garden apartment; the high-rise apartment; etc. These building types are not shown in recognizable locations; in fact, they are not shown in a building context at all, but as free-standing ideals.

In planning and urban renewal documents of the 1960s, buildings are shown as specific masses, with a relation to surrounding buildings and fitted to the types of employment and economic activity of their neighborhoods. This is demonstrated by Figure 10, showing the plan for Government Center, compared to Figure 11, taken from Zoning Policies (1953).

The real estate page of the Boston Globe on May 28, 1967, showed a prototype rowhouse being designed by Benjamin Thompson and Associates, architects, for filling South End vacant lots. The basic system is eight pre-fabricated steel columns with cross beams inserted into slits within the vertical columns. The horizontal cross beams protrude outside the vertical lines so that they can be cut to allow the whole unit to fit within two buildings on either side of the vacant lot. This unit fits snugly, without tampering with walls of the existing buildings. Prefabricated parts, such as concrete floor panels and a stairway, can be inserted. Fronts will be in scale with existing bow-front windows. New units will keep the traditional alignment and still have a modern



THIRTY YEARS of CHANGE

Fig. II. - Ideal building types sought by the new Zoning Code, from City Planning Board, Zoning Policies for Boston (Boston: City Planning Board, 1953).

look. This prototype rowhouse demonstrates the concept of a building in Boston planning of the 1960s. It is a building designed to perpetuate rather than alter the building form of Boston.

The following Table 5 shows the relation between zoning districts of the new Zoning Code, and selected social characteristics from the 1960 Census. The Zoning Code controls buildings and not social characteristics. This table shows that zoning districts correlate²² so strongly with family income that it is fair to infer that such a zoning law will

²²Calculation of coefficient of correlation of a regression line:

Residential Zoning District	Miles from Center	1960 Median Family Income
S.3 + S.5	6.3	\$7150
R.5	5.0	6400
R.8	3.5	5800
H 1	2.3	4900
H 2	1.2	3800
H 3	1.1	4600

(H 4, H 5, and H-2-65 Districts are excluded because they represent small high income enclaves [Beacon Hill and Back Bay] near the center of the city. These three excluded districts represent six census tracts, or 4% of all census tracts).

$$r = \frac{n \sum x_i y_i - (\sum x_i)(\sum y_i)}{\sqrt{n \sum x_i^2 - (\sum x_i)^2} \sqrt{n \sum y_i^2 - (\sum y_i)^2}} = .97$$

$$\begin{aligned}\sum x &= 19.4 \\ \sum y &= \$3265 \\ \sum x^2 &= 84.7 \\ \sum y^2 &= \$1,855,0000\end{aligned}$$

John E. Freund, Modern Elementary Statistics, (Englewood Cliffs, N. J.: Prentice-Hall, Inc., 1964), p. 328.

TABLE 5

RELATION BETWEEN NEW ZONING CODE DISTRICTS
AND 1960 SOCIAL CHARACTERISTICS

Source: 1965 Zoning Maps and 1960 Census

District	Miles from Center	No. of Census Tracts	Social Sound % ^a	Value/ Dwelling \$	Monthly Rental \$	Median Family Income	Owner Occupied %	White %
S.3	6.5	6	97	17,000	102	7,700	73	95+
S.5	6.2	7	94	14,400	96	6,600	65	95+
R.5	5.0	18	89	13,800	92	6,400	46	8-
R.8	3.5	32	83	11,000	85	5,800	28	81
H 1	2.3	49	76	7,200	63	4,900	20	58
H 2-65	0.3	2 ^b	95	21,800	102	8,200	10	95+
H 2	1.2	20	43	7,300	52	3,800	6	66
H 3	1.1	14	70	11,200	56	4,600	7	91
H 4	1.0	2 ^b	99	24,200	108	6,400	7	91
H 5	0.9	2 ^b	87	25,000	113	8,200	33	95+

^aBeacon Hill Historic District^bBack Bay high income enclave along the Charles Basin

reinforce economic segregation. Only four census tracts in the H4 and H5 districts, which represent high income enclaves of Back Bay along the Charles Basin, vary significantly from the rule that family income decreases with permitted building intensity. The S.3, S.5, and R.8 districts, where family incomes are highest, are an average of five miles away from the H2 and H3 districts, where family incomes are the lowest. Much of the income segregation found in this table evolved during 1924-1960 while the first Boston zoning law was in effect. The new code adopts the same intensity gradation theory as the old law, but seeks to "upgrade" the entire city, that is, require slightly higher standards in every part of the city. The effect should be even greater income segregation than occurred under the 1924-1964 zoning system.

According to zoning theory, social segregation is an inevitable result of the competitive struggle going on between buildings. (See the chapter II discussion of the Enabling Act for more on this.) The reasoning goes that higher income groups can afford new housing, generous space between buildings and high home-to-downtown transportation costs. The competition between buildings for the most accessible location forces new residential buildings with extensive open space around them outward to the edges of the city. Because central sites are expensive, new buildings there are either commercial, or must crowd in so many rent-paying families that most higher income persons are not interested. The result is social and economic segregation, with lower class, lower income persons generally occupying the highest density and oldest housing in the center of the city, with upper class, higher income families occupying

lowest density housing at the outer edge of the city. There is a continuum of class, income and density in between.

Almost a half century ago the social segregation effect of zoning was defended by a planning spokesman:

The zoning movement insofar as it may be said in a small measure to facilitate the natural trend towards a reasonable segregation of economic classes is neither undemocratic or anti-social. Such effect of zoning is merely incidental. A reasonable segregation is normal, inevitable and desirable and cannot be greatly affected, one way or the other, by zoning.²³

Such outright defense of social and economic segregation is rare in urban literature today. There are still explanations of segregation as an inevitable aspect of urban form, especially by economists.²⁴ And in the late 1950s when future land use and transportation planning were first systematically combined the past pattern of economic segregation was projected into the future, and a transportation system was designed to reinforce it.²⁵ In 1959 I criticized such deterministic planning among other reasons because it results in economic segregation.²⁶ More recent land use transportation plans generate alternate patterns of

²³ Robert H. Whitten, Advisor, Cleveland City Plan Commission, Proceedings of the Thirteenth Annual Conference on City Planning, (Pittsburgh, 1921), p. 28.

²⁴ William Alonso, Location and Land Use (Cambridge: Harvard University Press, 1964).

²⁵ "Land Use and Traffic Models: A Progress Report," Journal of the American Institute of Planners, Vol. XXV, no. 2, (May 1959), entire issue. See especially articles by Blumenfeld, Hamburg and Creighton, Row and Jurkat.

²⁶ William Weismantel, "Dante's Inferno: The First Land Use Model," Journal of the American Institute of Planners, Vol. XXV, No. 4, (November, 1959) 175.

future land use, and offer decision makers a choice.²⁷ That alternate can be chosen which most encourages the integration of social classes.

Norman Williams, a contemporary authority on planning law, criticizes zoning when it prevents people from moving into specified areas because of the size of their income. "In a society with democratic pretensions," he declares, such government action is as improper as segregation based on color of skin. "It is a major premise of American democracy that familiarity, at least in the context of economic security and decent living conditions, breeds not contempt but mutual respect."²⁸

Herbert Gans, a prominent sociologist who has moved into two different communities in order to study their social structure, is also in favor of social heterogeneity, but at a scale where diverse groups can find places or activities where integration and not conflict will occur. He defines heterogeneity as difference in social class and age, and suggests that there be homogeneity at the sub-block level of 10-12 houses, but heterogeneity at the level of the elementary school and in the use of neighborhood facilities.²⁹ It is likely that both Williams

²⁷Alan M. Vorhees, Charles F. Barnes, Jr. and Francis E. Coleman, Traffic Patterns and Land Use Alternatives, A Paper presented at the 41st Annual Meeting of the Highway Research Board, (Washington: Highway Research Board, 1962), describing Hartford, Conn. studies.

²⁸Norman Williams, Jr., The Structure of Urban Zoning, (New York: Butterheim Publishing Corp., 1966), p. 100, 106. That chapter first published as "Planning Law and Democratic Living," in Law and Contemporary Problems, XX, No. 2 (Spring 1955), 317.

²⁹Herbert J. Gans, The Levittowners, (New York: Pantheon Books, 1967), p. 173.

and Gans as well as Michelson³⁰ would disapprove of the amount of social segregation sought by the Boston Zoning Code and Map.

The 1965/1975 General Plan for the City of Boston takes a distinctly different attitude towards social segregation in housing than is found in the 1950 Plan and 1965 Zoning Code. The 1965/1975 Plan unlike the 1950 Plan does not contain a map or policy statements indicating that housing density should vary with distance from the center of the city. To the contrary, it contains such statements as these:

A basic premise of the Plan is that all residents of the metropolitan area should have equal opportunities to live anywhere in the metropolitan area they choose, and that the denial of these opportunities is detrimental both to the area's economy and its morale. . . . The Policy of the Development Program and this Plan is . . . to promote stability in the size of Boston's population while increasing the diversity of its composition, so that it more nearly reflects the composition of the Region's population as a whole. This would, of course, entail a reversal of the present trends towards increasing proportions of low income groups and non-whites in the Core City.³¹

There is a drawing with this caption, "Public low-income housing should, as a rule, be built on small sites and integrated with existing resi-

³⁰"Two major types of variable are conspicuous by their failure to vary systematically with ideal choices of environment. One is social rank, the other is stage in the life cycle. This suggests that much of our current segregation in cities by income and family size represents the rigidities of the housing market and of conceptions of what cities should look like, and not the socially based desires of the people involved. The choices people would make are not a single function of their age or status (nor, in addition, of ethnic position per se), but of more subtle influences--their values and styles of live." Wm. Michelson, "An Empirical Analysis of Urban Environmental Preferences" Journal of American Institute of Planners, XXXII, No. 6. (November, 1966), 355.

³¹Boston Redevelopment Authority, 1965/1975 General Plan for the City of Boston, (Boston: Boston Redevelopment Authority, 1965) p. 59. Cited hereafter as 1965/1975 General Plan.

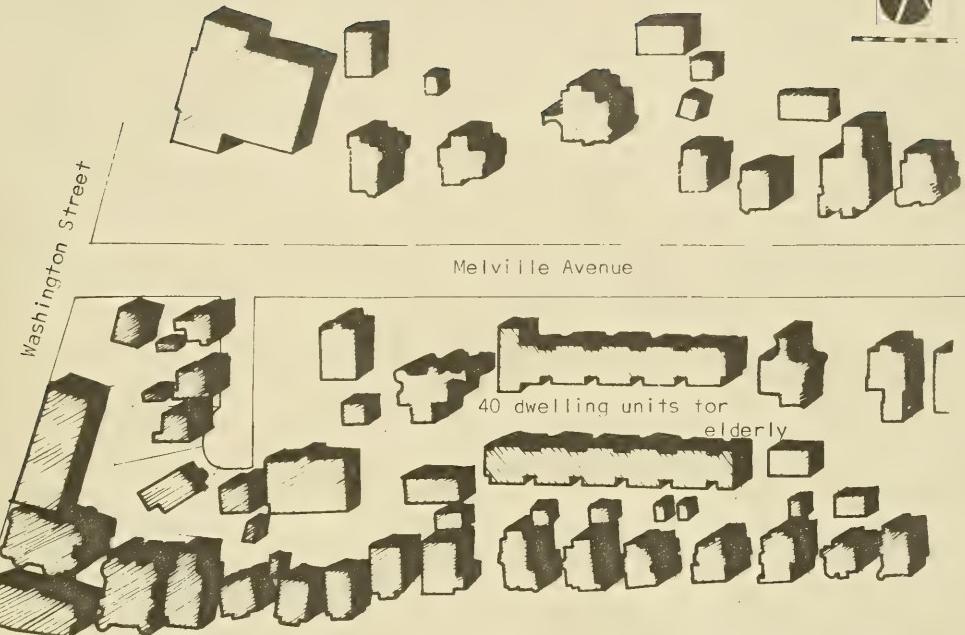
dential communities.³² A zoning code and map to carry out the 1965/1975 General Plan's "basic premise . . . that all residents of the metropolitan area should have equal opportunities to live anywhere in the metropolitan area they choose" would not contain the correlation of zoning control strictness and family income found in Boston's 1965 Zoning Code as shown by Table 5. Recall also Table 2 which indicated how the permitted dwelling type varies with distance from the Hub. Multiple dwellings may not be erected in the three outermost zoning districts residential zoning districts. Such dwelling type segregation conforms to the findings and proposals of the 1950 Plan, but not the 1965/1975 Plan.

In 1965 the Boston Housing Authority, following the policies of the 1960s that all Boston neighborhoods should be available to all social classes, ran into conflict with the Zoning Code and Map, which represent social policy of the 1950s. Permits were sought to build 40 units of public housing for elderly at Melville Avenue in Dorchester and 40 units at Davison and Pierce Streets in Hyde Park. Both sites are in the R.5 District, which is the third most restrictive zoning district in the city. The sites are 4.5 miles and 7.3 miles respectively from the Gold Dome of the State House. Building permits were at first withheld, because of nine zoning violations at one site and eleven at the other. Violations included locating apartments in districts where they are excluded, exceeding the minimum lot size, floor area ration, distance between buildings, minimum front side and rear yards, minimum usable open space. These buildings are not radical intrusions into these neighbor-

³² 1965/1975 General Plan, p. 62.

hoods. Each public housing building group has a total of only forty dwellings, housed in two story buildings, with land coverage of 25 percent in one case and 35 percent in the other. See Figure 13, page 84. The Board of Appeal granted variances to permit construction of these projects, but did so on the shaky legal fiction that it would be a hardship on the BHA as property owner to deny BHA such a use of land. Massachusetts' highest court has ruled that a hardship variance can apply only to an existing building, not a proposed building.³³

³³Russell v. Zoning Board of Appeals of Brookline, 209 NE^{2d} 337 (Mass. 1965).



Note that size, height, land coverage of these new housing structures generally matches their surroundings. Yet these structures deviate from many zoning requirements.

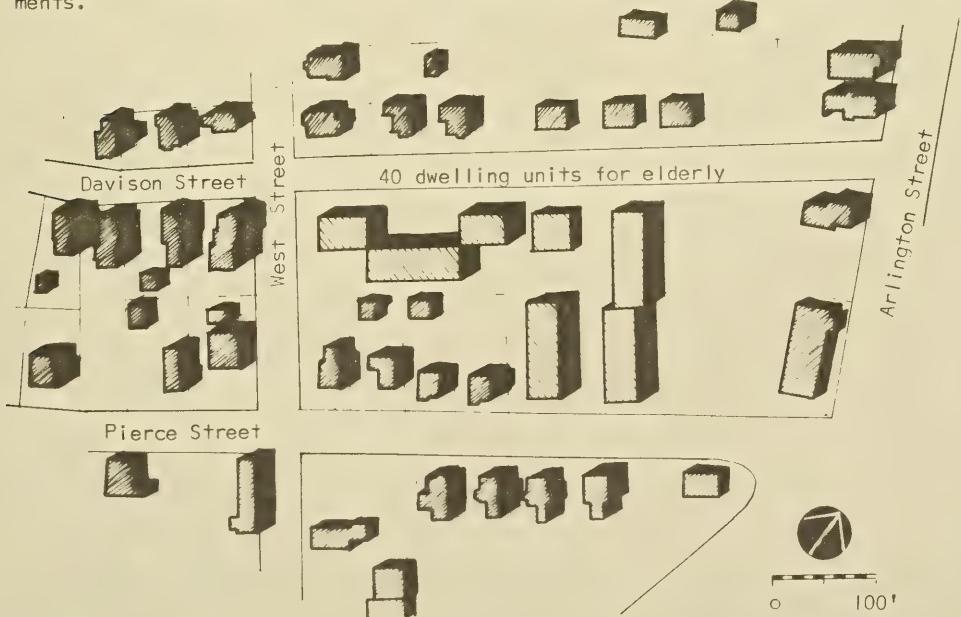


Fig. 12.--Site plans for two public housing for elderly projects showing their immediate contexts.

CHAPTER IV

MEASURING THE EVOLUTION TOWARDS NON-ZONING PROGRAMS AND CONTROLS

In 1950-1954 when the present Zoning Code was planned certain classes of public works or utility construction sponsored or controlled by the Commonwealth of Massachusetts were immune from the Boston zoning law.¹ But all private and all local public developers were subject to Boston zoning. Planners decided that the new Zoning Code would likewise control all private and all local public construction and uses of buildings and land. Indeed as Chapter II showed the theory of the new Zoning Code as a regulation of competition between property owners implies that the entire city and all developers public and private be subject equally to zoning.

By 1967 two programs which existed in 1950-1954 and were then subject to zoning had been granted partial or complete immunity from it. These are public housing and City of Boston public works. Two major programs which took effect since 1954 operate with partial immunity from

¹The 1924-1964 zoning law expressly exempted state-approved public utility facilities from zoning. Massachusetts, Acts of 1924, c. 488, as amended. The new zoning enabling act likewise exempts them. Massachusetts, Acts of 1956, c. 665, Sec. 6. Note, "Application of Local Zoning Ordinances to State-Controlled Public Utilities and Licensees: A Study in Preemption," Washington University Law Quarterly, MCMLXV, No. 2 (April, 1965), 195.

zoning. These are urban redevelopment corporations and urban renewal as it affects parcels, called disposition sites, acquired by the public and sold or leased for redevelopment. The two historic districts created since 1954 for Beacon Hill and Back Bay operate with considerable overlap and conflict with zoning.

Non-zoning programs and controls as described in this Chapter are those which have been granted partial or complete immunity from zoning since 1954, and the historic districts. This includes public housing, urban redevelopment corporations, and construction on urban renewal disposition sites. There is no logical reason why public works are not also reported here as a non-zoning program, except that Building Department data did not make it convenient to do this, and the point of the Chapter comes across without listing public works with non-zoning programs. Actually much public works construction occurred or will occur on urban renewal disposition sites, and is included in that category. Some minor non-zoning programs also have been ignored, such as the Park Frontages Ordinance which regulates building height and use along certain Boulevards, including Commonwealth Avenue.²

Chapters V and VIII, but not this Chapter, catalog the varieties of immunities from zoning, and the administrative consequences of immunity. This is a quantitative chapter. Its point is that non-zoning processes became responsible for about 30 percent of annual construction volumes by 1967, and during 1968-1974 will probably be responsible for more construction than the Zoning Code alone will control.

²Cited on p. 70 above.

The main thrust of this Chapter are Tables 6-9, which portray for four seven year periods the amount of construction controlled by zoning along, and controlled by four other non-zoning processes, usually concurrently or partly concurrently with zoning. The five programs portrayed in Tables 6-9 are more precisely defined below.

Zoning Code.³ In the Tables this means buildings or activities controlled only by zoning. In fact, zoning acts concurrently with many of the other controls and programs described below.

Public Housing.⁴ This means building permits received by the Boston Housing Authority for construction both within and without urban renewal projects.

Urban redevelopment corporations.⁵ These corporations are formed under Massachusetts law Chapter 121A to redevelop blighted sites privately, without necessarily receiving City or Federal financial assistance.

Urban renewal disposition sites. These are parcels of land owned by the Boston Redevelopment Authority⁶ and held for sale to developers according to urban renewal plans. Not included in this item is new

³Cited on p. 2 above.

⁴Massachusetts, Annotated Laws (1965), c. 121, Sec. 26 I to 26 VV.

⁵Massachusetts, Annotated Laws (1965), c. 121A.: For special amendments applying to Boston, see Massachusetts, Acts of 1960, c. 652. James H. Handler, "Private Participation in Urban Renewal," Journal of Housing, XXIII, No. 10, (November, 1966), 578.

⁶Prior to 1957 the Boston Housing Authority was the redevelopment agency for Boston. The Boston Redevelopment Authority was created by Massachusetts, Acts of 1957, c. 150, and was given additional power, including powers previously exercised by the City Planning Board in 1960. Massachusetts, Acts of 1960, c. 652.

construction or rehabilitation on privately owned land within urban renewal areas. The major control over construction on such privately owned land is the Zoning Code rather than the urban renewal plan.

Historic districts.⁷ These are the Beacon Hill District established in 1955 and later extended, and the Back Bay Residential District established in 1966.

The experience of Boston agencies in controlling the building process in our times can be divided into four seven year periods. There was 1947-1953, when policies for a new zoning code were formed; 1954-1960, when the Zoning Enabling Act went through the legislature and City Council, and a proposed Zoning Code and maps were presented to public gatherings throughout the City; 1961-1967, when the new Code took effect in the midst of a construction boom 30 percent of which was controlled by other processes than zoning; and 1968-1974, when it is anticipated that the non-zoning building control processes will dominate. Tables 6, 7, 8 and 9 show the number and per cent of dwellings, and the dollar volume and per cent of construction cost (including non-residential) for five categories of building control during the four seven year periods

⁷ Historic Beacon Hill District was established by Massachusetts, Acts of 1955, c. 616 as amended.

The Beacon Hill District law was upheld in Opinion of the Justices, 128 N.E. 2d 563, (Mass. 1965).

The Back Bay Residential District was established by Massachusetts, Acts of 1966, c. 652. These were both special acts applying only to specific areas of Boston. In 1960 an enabling act was passed controlling the formation of historic districts in all cities. Boston can create additional historic districts by following the procedure of that act. Massachusetts, Annotated Laws (1965), c. 40 c.

described.⁸ Tables 10-12 show how three of the programs expanded (or, in the case of public housing, died and was reborn) during 1947-1967, and are expected to expand in 1968-1974.

1947-1953 (Table 6), the period when most of the findings and policies of the new Zoning Code were made, predates all of the non-zoning programs and controls except public housing. By 1954 when the zoning policies report was published public housing construction had stopped and did not resume again until 1960. So planners were not then faced with the issue of conflicts between zoning and public housing construction. Total volume of construction in Boston was low during that period.

1954-1960 (Table 7), was another slack period for Boston construction. New dwelling units fell in rate of building permit

⁸Data for this Chapter was derived from these sources: Boston Building Department, Annual Reports, 1947-1965; Boston Redevelopment Authority, Fact Sheets on the New Boston's Urban Renewal Program, (Boston: Boston Redevelopment Authority, April 1967); Boston Redevelopment Authority, Housing in Boston, (Boston: Boston Redevelopment Authority, 1967); cited hereafter as City of Boston, Municipal Register for 1966 Housing in Boston (1967); (Boston: City of Boston, 1967); Building Department Files; Discussions with B.R.A. project planners.

Urban renewal construction costs and dwelling units on tables 6-9, and 12 do not include construction influenced by "conditional acquisitions." That is a device wherein the owner of a parcel of land within an urban renewal project area may retain his land only if he develops it according to the urban renewal plan. Such a "conditional acquisition" is proving to be nearly as effective a control as public ownership of the disposition site.

Building costs are estimated to be those reported to the Building Department when a permit is applied for, rather than actual costs. The same building has one cost in a Building Department record, another on a Boston Redevelopment Authority Fact Sheet. For seven large redevelopment buildings both costs were found, and a factor of 1.62 derived. This factor was then applied to other Fact Sheet cost estimates in preparing these tables.

authorization to one-fourth of the previous seven year period. Public housing construction dropped from 23 percent of total cost to one percent. Urban renewal as a means of controlling building construction got under way through two projects, the New York streets industrial redevelopment effort and the West End residential development. These amounted, however, to only three percent of the total construction volume of the period. During 1954-1960 there was only one building permit issued for an urban redevelopment corporation, but this single building permit for the Prudential Tower was the largest building permit ever issued in Boston (over 69 million dollars), and alone was 19 percent of total construction volume for that seven year period.

1961-1967 (Table 8), was a building boom for Boston, with 808,000,000 dollars in construction compared to 357,000,000 dollars the previous seven years. Building permits for construction in seven urban renewal projects, four urban redevelopment corporation projects, and seven public housing sites accounted for 30 percent of total construction volumes.

During 1968-1974 (Table 9) construction controlled by the four processes other than (or concurrently with) the Zoning Code is expected to absorb 61 percent of the construction dollar volume, and 46 percent of the dwelling units added by new construction. This estimate for the four non-zoning processes considers only buildings in planning in the spring of 1967. A new Mayor and Urban Renewal Administrator have taken office since then. It would be difficult for these leaders to repudiate the urban renewal projects shown in Table 9, all of which were either

approved by the City Council and Boston Redevelopment Authority, or were approved and actually being carried out before the new leaders took office. It is likely that they will carry out the projects that were in execution or planning in the spring of 1967, and will add projects of their own choosing in 1968-1974. That is what Mayor Collins and B.R.A.. Administrator Logue did after they took office in the early 1960s. The 808 millions of dollars total volume of construction and 26,700 total dwelling units estimated for 1968-1974 are merely the 1961-1967 figures repeated. It would be speculative to say whether the total volumes during that period will exceed or fall below the 1961-1967 rate.

From 1947-1953 to 1961-1967 the amount of construction controlled only by zoning dropped from 77 percent to 69 percent, as several new non-zoning processes were created during that period. The previous chapter showed that many of the objectives of these non-zoning programs and controls are either being suppressed by zoning, or would be suppressed if variances and immunities from zoning were not made available to them. Quantities displayed in this chapter indicate how serious is this collision of objectives.

The non-zoning programs and controls stimulated rather than discouraged the private forces of development, according to Tables 6-9. From 1947-1953 that sector of construction controlled only by the zoning law accounted for 235 million dollars of construction. In 1961-1967 when the non-zoning programs and controls; many with immunities from zoning, were gaining in importance the sector controlled only by zoning accounted for 567 million dollars of construction. This indicates that

the granting of zoning immunity to public and limited profit development programs will not destroy and may even stimulate free market competition in building.

During 1968-1974 the objectives of the non-zoning programs and controls will probably be more important than zoning objectives, in terms of building volumes. The maxim that majority rights are superior to minority rights dictates that the non-zoning programs and controls should have immunity from zoning in 1968-1974.⁹

Construction and Population Trends:
Boston Compared to Other Cities¹⁰

Figures 13-18 which follow compare Boston with other cities in rates of construction and population change. This data helps assess how useful findings from Boston experience might be in other cities.

Figure 13 arranges by number the new housing units authorized between 1945-1960 per 1000 population 1960 of the twenty-five largest cities against the percent change in population of these cities between 1950 and 1960. New housing authorized includes public housing, and is used here as a parameter of all types of construction. This figure shows that Boston lost a greater percent of population than any of the other 24 largest cities during the 1950s (13% loss). There is a correlation

⁹Cf. William L. C. Wheaton, "Public and Private Agents for Change," in Melvin C. W. Webber, Explorations into Urban Structure (Philadelphia: U. of Pa. Press, 1964), p. 172.

¹⁰These tables were derived from U.S., Department of Commerce, Bureau of Census, Housing Construction Statistics 1889-1964, (Washington: U.S. Government Printing Office, 1966), and U.S., Department of Commerce, Bureau of Census, Housing Authorized by Building Permits and Public Contracts (Washington: U.S. Government Printing Office, 1966).

TABLE 6
1947-1953 BOSTON BUILDING CONSTRUCTION VOLUMES,
BY CONTROL PROCESS

Building Control Process	Dwellings Added By New Construction		Cost of All Construction Including Non-Residential (New and Alterations)	
	Number	Percent	Dollars	Percent
Zoning Code ^a	13039	62%	235,525,000	77%
Public Housing	7862	38%	71,544,000 ^b	23%
Urban Renewal Disposition Sites	0	0	0	0
Urban Redevelopment Corporations	0	0	0	0
Historic Districts	0	0	0	0
Total	20901	100%	307,069,000	100%

^aThese are structures whose dimensions and use are controlled exclusively by the Boston zoning law, which during this period was c. 488 of the Acts of 1924, as amended. Public housing during this period enjoyed no favored position over private construction under the zoning law.

^bThis is based on \$9100 per dwelling unit, a figure derived by sampling BHA building permits of that period.

TABLE 7
1954-1960 BOSTON BUILDING CONSTRUCTION VOLUMES,
BY CONTROL PROCESS

Building Control Process		Cost of All Construction Including Non-Residential (New and Alterations)		
	Number	Percent	Dollars	Percent
Zoning Code	4169	80%	273,087,000	76%
Public Housing	304 ^a	6%	3,344,000	1%
Urban Renewal Disposition Sites	720	14%	9,947,000 ^b	3%
Urban Redevelopment Corporations	0	0	69,339,000 ^c	19%
Historic Districts ^d	0	0	1,415,000	1%
Total	5193	100%	357,132,000	100%

^aThese are public housing units for low income elderly persons and families. Building permits were issued to the Boston Housing Authority in 1960 for these units.

^bThese are sites assembled by the Boston Redevelopment Authority for the sale to developers. Building permits were issued for the New York Streets Industrial project from 1957, and the West End Residential project in 1960.

^cThe 52-story Prudential Tower received this 69 million dollar building permit in 1959.

^dThis is the Beacon Hill District.

TABLE 8
1961-1967 BOSTON BUILDING CONSTRUCTION VOLUMES,
BY CONTROL PROCESS

Building Control Process	Dwellings Added By New Construction		Cost of All Construction Including Non-Residential (New and Alterations)	
	Number	Percent	Dollars	Percent
Zoning Code	20513	77%	567,991,000	69%
Public Housing	562	2%	6,744,000	1%
Urban Renewal Disposition Sites	3730	14%	150,712,000	19%
Urban Redevelopment Corporations	1872	7%	78,354,000	10%
Historic Districts	23	0%	4,199,000	1%
Total	26700 ^a	100%	808,000,000 ^a	100%

^aThis table was prepared in the Spring of 1967. Dollar and dwelling unit volumes for 1967 were estimated as the average of 1961-1966 volumes.

TABLE 9

1968-1974 BOSTON BUILDING CONSTRUCTION VOLUMES,
BY CONTROL PROCESS

Building Control Process	Dwellings Added By New Construction		Cost of All Construction Including Non-Residential (New and Alterations)	
	Number	Percent	Dollars	Percent
Zoning Code	14149	54%	314,688,000	39%
Public Housing	1320 ^a	5%	15,840,000 ^a	2%
Urban Renewal Disposition Sites	10820 ^b	40%	418,010,000 ^b	52%
Urban Redevelopment Corporations	250 ^c	1%	49,960,000 ^c	6%
Historic Districts ^e	161	0%	9,502,000	1%
Total	26700 ^d	100%	808,000,000 ^d	100%

^aThese units were in construction or advanced planning March 1967.

^bThere are eleven projects: in April, 1967, 8 were in execution, 2 were approved by U.S., one had local approval and was seeking U.S. approval.

^cThis represents three projects in execution in April, 1967, and one in the planning stage.

^dThe same totals as 1961-1967 are used here.

^eThis is estimated building activity within the Beacon Hill and Back Bay districts as they existed in 1967.

TABLE 10

PROJECT SIZE AND PURPOSE OF PUBLIC HOUSING UNITS
IN BOSTON 1938-1974

Period	Number of Projects	Total Dwelling Units	Average Dwelling Units Per Project
1938-1942		5231	
1947-1953	17	7862	462
1954-1960	5 ^a	304 ^a	61 ^a
1961-1967	6 ^a	562 ^a	94 ^a
1968-1974 ^b	{ 4 12 ^a	119 1201 ^a	30 100 ^a

^aThese are for elderly persons and couples.^bUnits planned in the spring of 1967. This is not an estimate of all probable 1968-1974 public housing units.

TABLE II

1954-1974 URBAN REDEVELOPMENT CORPORATION CONSTRUCTION VOLUMES IN BOSTON

Project	1954-1960		1961-1967		1968-1974 ^b		Total	1954-1974
	Units Dwelling Units	Dollars ^a	Units Dwelling Units	Dollars	Units Dwelling Units	Dollars		
Prudential Center 31.3 Acres	0	69,339,000	793	60,503,000	0	37,000,000	793	166,842,000
Whitney Street Project 7.2 Acres	0	0	422	6,300,000	148	2,590,000	570	8,890,000
Jamaicaway Tower 3.9 Acres	0	0	279	5,551,000	0	0	279	5,551,000
Tremont-Mason .75 Acres	0	0	378	6,000,000	0	0	378	6,000,000
Allston-Waverly 4.9 Acres	0	0	0	0	102	1,110,000	102	1,110,000
Christian Science	0	0	0	0	0	9,260,000	0	9,260,000
Total	0	69,339,000	1872	78,354,000	250	49,960,000	2122	197,653,000

^aFor all periods this includes non-residential construction costs.

^bThis includes only projects in planning or execution in Spring 1967.

TABLE 12

1954-1974 CONSTRUCTION VOLUMES ON URBAN RENEWAL DISPOSITION SITES
IN BOSTON

Project ^b	1954-1960		1961-1967		1968-1974		Total 1954-1974	
	Dwelling Units	Dollars ^a	Dwelling Units	Dollars	Dwelling Units	Dollars	Dwelling Units	Dollars
New York Streets 22.3 Acres	0	1,341,000	0	3,968,000	0		0	5,309,000
West End 41 Acres	720	8,606,000	1680	34,694,000	0	2,010,000	2400	45,310,000
Government Center 60 Acres	0	0	0	60,100,000	0	62,400,000	0	122,500,000
Washington Park 502 Acres	0	0	1550	16,600,000	0	6,680,000	1550	23,280,000
Waterfront 104.5 Acres	0	0	0	2,650,000	1920	52,300,000	1260	54,950,000
South Cove 96.5 Acres	0	0	0	24,700,000	650	25,900,000	650	50,600,000
South End 616 Acres	0	0	500	8,000,000	2800	38,700,000	3300	46,700,000
Charlestown 520 Acres	0	0	0	0	1400	39,500,000	1400	39,500,000
North Harvard 6.5 Acres	0	0	0	0	210	4,320,000	210	4,320,000
Central Business District-245 Acres	0	0	0	0	1250	129,500,000	1250	129,500,000
Fenway 507.3 Acres	0	0	0	0	2750	41,300,000	2750	41,300,000
Campus High School 129.2 Acres	0	0	0		500	15,400,000	500	15,400,000
Total	720^a	9,947,000	3730	150,712,000	10820	418,010,000	15770	578,669,000

^aFor all periods this includes non-residential construction costs.^bAcreages include more than disposition sites.

between rate of new housing authorized and population growth among these cities.¹¹ Boston ranked 24th of the 25 in rate of housing authorized during that period.

Figure 14 presents similar data for 1961-1966. Boston ranked 12th out of 25 cities in rate of new housing authorized during that period, which is a substantial rate increase over its 1945-1960 position.¹²

New housing authorized in Boston between 1921-1966 is plotted against the average rate authorized in 7 cities similar to Boston in Figure 15. Each of these 7 cities had population levels between a half million and a million in 1920 and in 1960. They are Baltimore, Boston, Buffalo, Cleveland, Pittsburgh, St. Louis, and San Francisco. Boston's rate of new housing authorized was similar to the average of these 7 cities between 1921 and 1939. From 1940 until 1961 Boston lagged behind the average for this class, except for the years 1950 and 1951. A 1961-1966 spurt of new construction enjoyed by Boston placed it once more with the average for this group of cities.

Figures 16 and 17 compare rate of new public housing units authorized per 1960 population of the 25 largest cities against the percent change in population of these cities between 1950 and 1960.

¹¹ $r = .96$ coefficient of correlation for the data shown in Figure 14. The formula used to determine coefficients reported in footnotes 11, 13, and 14 is set out on page 328 of Freund. The formula to determine whether the coefficient is significant to the .05 level is set out on page 337 there. John E. Freund, Modern Elementary Statistics, (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1964).

¹²No other of the 25 largest cities (1960) improved its rank as much as Boston from 1945-1960 to 1961-1966 in per capita rate of new housing authorized. Boston moved up 12 places in rank. Second best in improvement was made by Cincinnati, which moved up 7 places in rank.

Figure 15 portrays the 1950-1960 period, and Figure 17 the 1961-1966 period. There is a barely significant correlation between rate of public housing construction and population loss.¹³ Figures 17 and 18 show that Boston, which lost the largest percentage of population 1950-1960, had the highest or second highest rate of public housing authorization between 1950 and 1966.

Table 13 on page 113 shows the extraordinary amount of Federal participation in Boston's urban renewal program in 1961-1966. From 1949-1960 Boston ranked 13th of the 25 largest cities in per capita amount of Federal grant approvals for urban renewal. Between 1961-1966 Boston moved to first place both in per capita and total Federal grant approvals. Boston received 9 million more Federal urban renewal dollars than the second ranking city, New York, which has eleven times the population of Boston. There is a barely significant correlation between the rate of Federal urban renewal grant approval per capita and the percentage of population loss 1950-1960 among the 25 largest cities.¹⁴

Taken together, these figures portray Boston emerging from World

¹³ $r = -.41$ coefficient of correlation for the data shown in Figures 17 and 18 combined. This is barely significant at the .05 level.

¹⁴ $r = .58$ coefficient of correlation for the data from Table 12A. This is barely significant. This finding of a significant correlation contrasts sharply with another study which concluded that the amount of urban renewal activity in a City does not depend on either the age of the City, or its size. Edward F. R. Hearle and John H. Niedercorn, The Impact of Urban Renewal on Land Use, (Santa Monica, Cal.: The Rand Corporation, June 1964). Hearle and Niedercorn attempted to explain the ratio of land in urban renewal projects to total acreage by the City's age or size. They analyzed 297 projects which had been approved in 102 cities by 1962.

War II as the large central city, its residents most wanted to migrate from into surrounding suburbs. Boston might be characterized as the most obsolete of the 25 largest cities, in terms of tastes in housing and structures. There was a desperate need to replace old dwellings and structures with new in Boston, but the private market responded very weakly during 1945-1960. The response was weaker in Boston than in any of the 25 largest cities except one.

Boston officials therefore initiated or stepped up deliberate programs such as public housing and urban renewal, and extraordinary means of stimulating private development, such as urban redevelopment corporation legislation. The impact of these programs in 1961-1966, combined with an improved rate of purely private construction obviously improved Boston's standing among the 25 largest cities in rate of new housing authorized. Figures 14 and 15, and Tables 6-8.

Other large central cities probably will go through the sequence of loss of population, sluggish rate of private construction, increased emphasis on public programs such as low rent housing and urban renewal, and a collision of these programs with conventional zoning. Leaders in such cities may benefit from this Thesis' portrayal of Boston's experience in this sequence.

Evidence that other cities will follow such a sequence are recent population estimates showing that many older central cities are continuing to experience the population loss reported between the 1950 and 1960 census.¹⁵ Figures 13 and 14 show that such cities can expect a

¹⁵ Of the 25 largest cities in 1960, 14 lost population between 1950 and 1960. One authority estimates that 10 of these 14 continued

sluggish rate of new private construction. Figures 16 and 17 and Table 13 show that such cities experience a tendency to step up public housing and urban renewal. The amount of Federal investment in urban renewal has been increasing at a faster rate than that of private construction. In view of the weak though significant correlation between population loss and urban renewal investment one can also expect random cities which have not experienced population loss to nevertheless step up their urban renewal programs, and to perceive increasing conflicts between urban renewal and conventional zoning.

to lose population between 1960 and the beginning of 1968. Of the 100 largest cities in 1968, 30 lost population between 1960-1968. Rand McNally & Company, Commercial Atlas & Marketing Guide, 1968 Edition, (New York: Rand McNally & Co., 1968), p. 40.

16 Comparison of Volumes of New Construction and Urban Renewal Reservation, 1950-1965

Year	Urban Renewal Reservations Outstanding (millions)	All New Construction Put in Place (millions)
1950	198	33,575
1955	553	46,519
1960	1866	53,941
1965	4940	71,912

Robert E. Lipsey and Doris Preston, Source Book of Statistics Related to Construction, National Bureau of Economic Research (New York: Columbia University Press, 1966), p. 31. U.S., Bureau of the Census, Construction Reports, Series C30-66S, Value of New Construction Put in Place, 1962-1966, (Washington: U.S. Government Printing Office, 1967), p. 7. U.S. Department of Housing and Urban Development, Annual Report 1965, (Washington: U.S. Government Printing Office, 1966), p. 161.

New Housing Units Authorized 1945-1960 Per 1000 1960 Population



Fig. 13.--New Housing Units Authorized 1945-1960 Per 1000 1960 Population v. Percentage Population Change 1950-1960 for Largest Twenty-Five American Cities (1960).

New Housing Units Authorized 1961-1966 per 1000 1960 Population

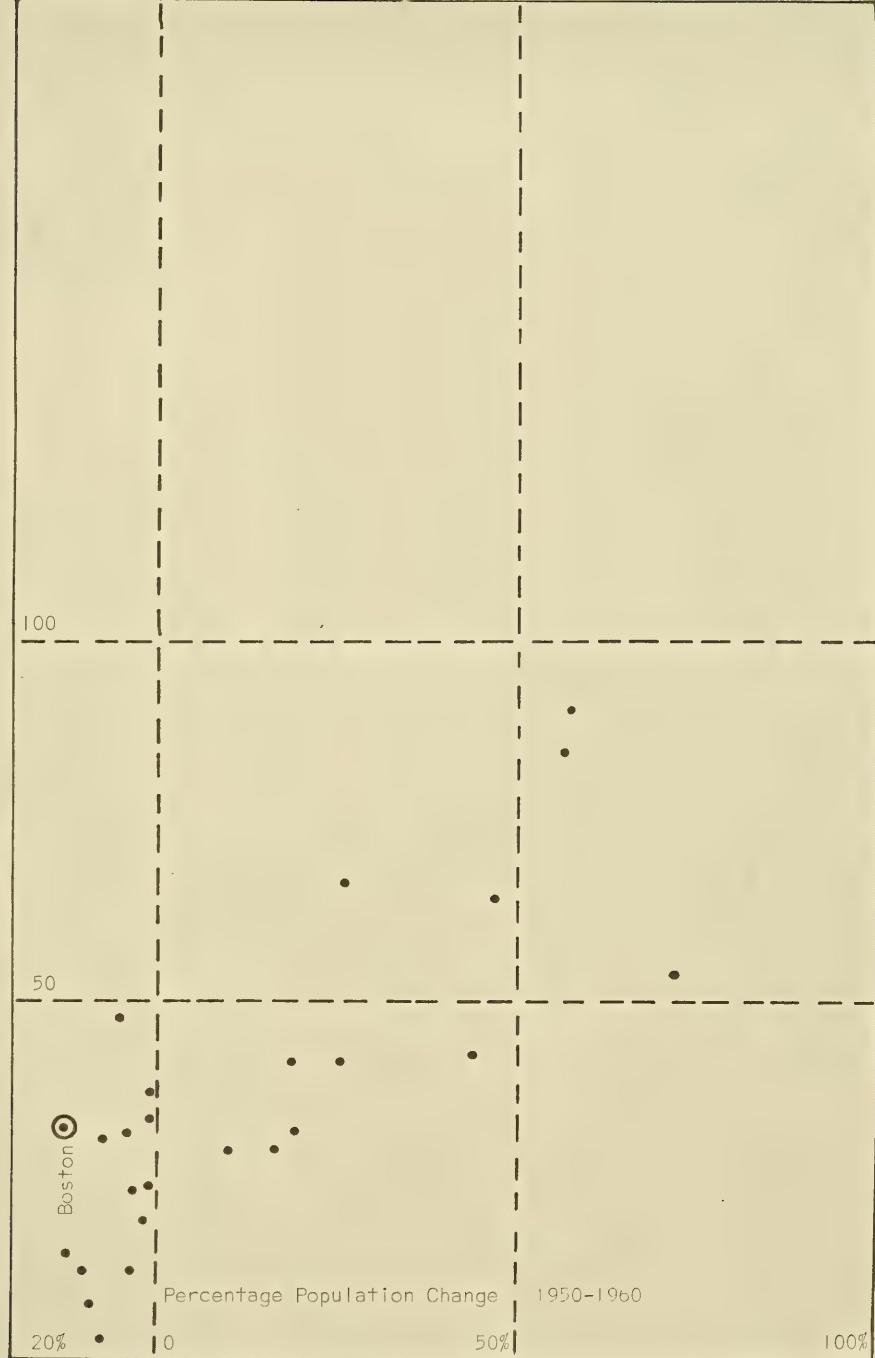
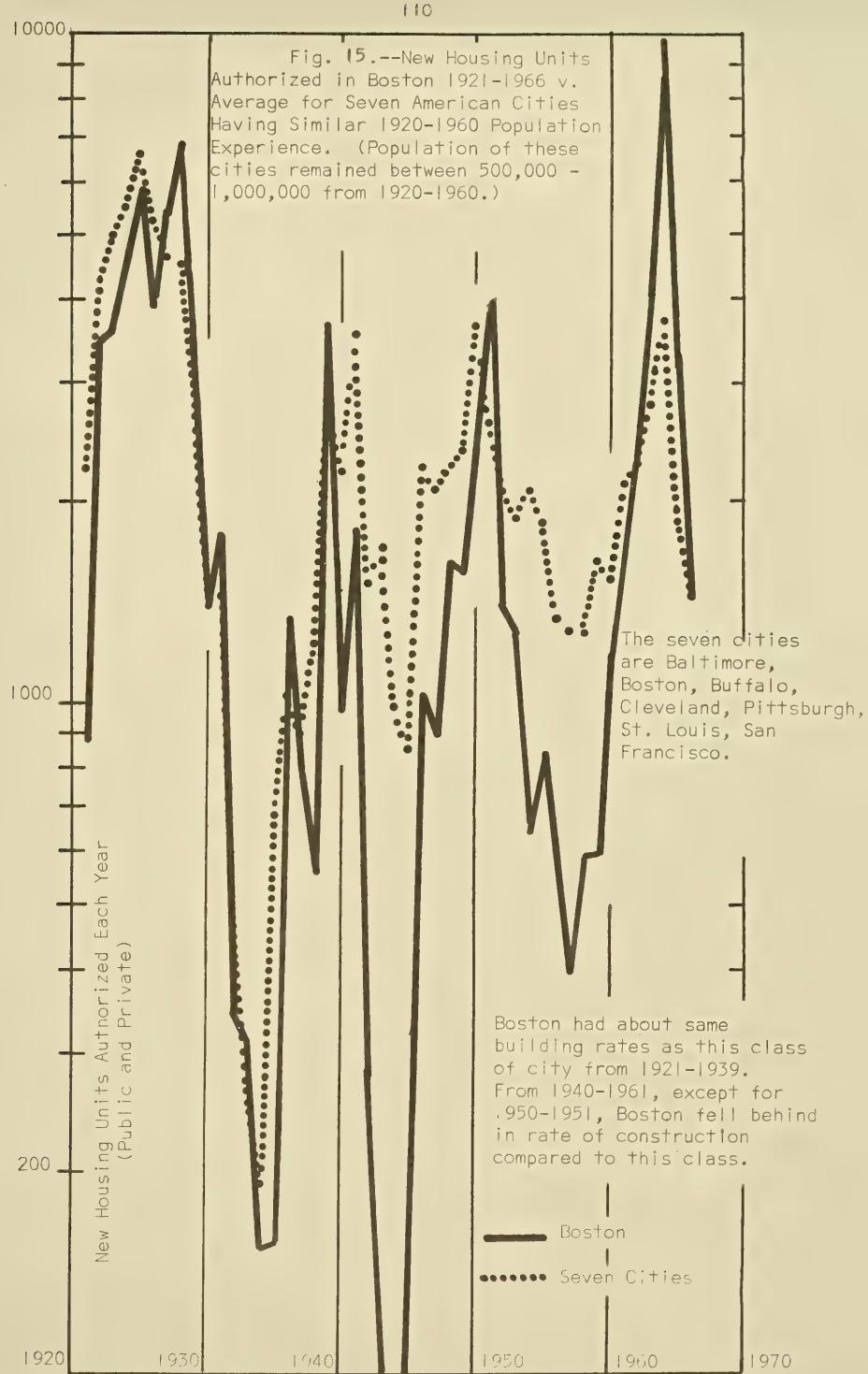


Fig. 14.--New Housing Units Authorized 1961-1966 Per 1000 1960 Population v. Percentage Population Change 1950-1960 for Largest Twenty-Five American Cities (1960).



New Public Housing Units Authorized 1950-1960 Per 1000 1960 Population

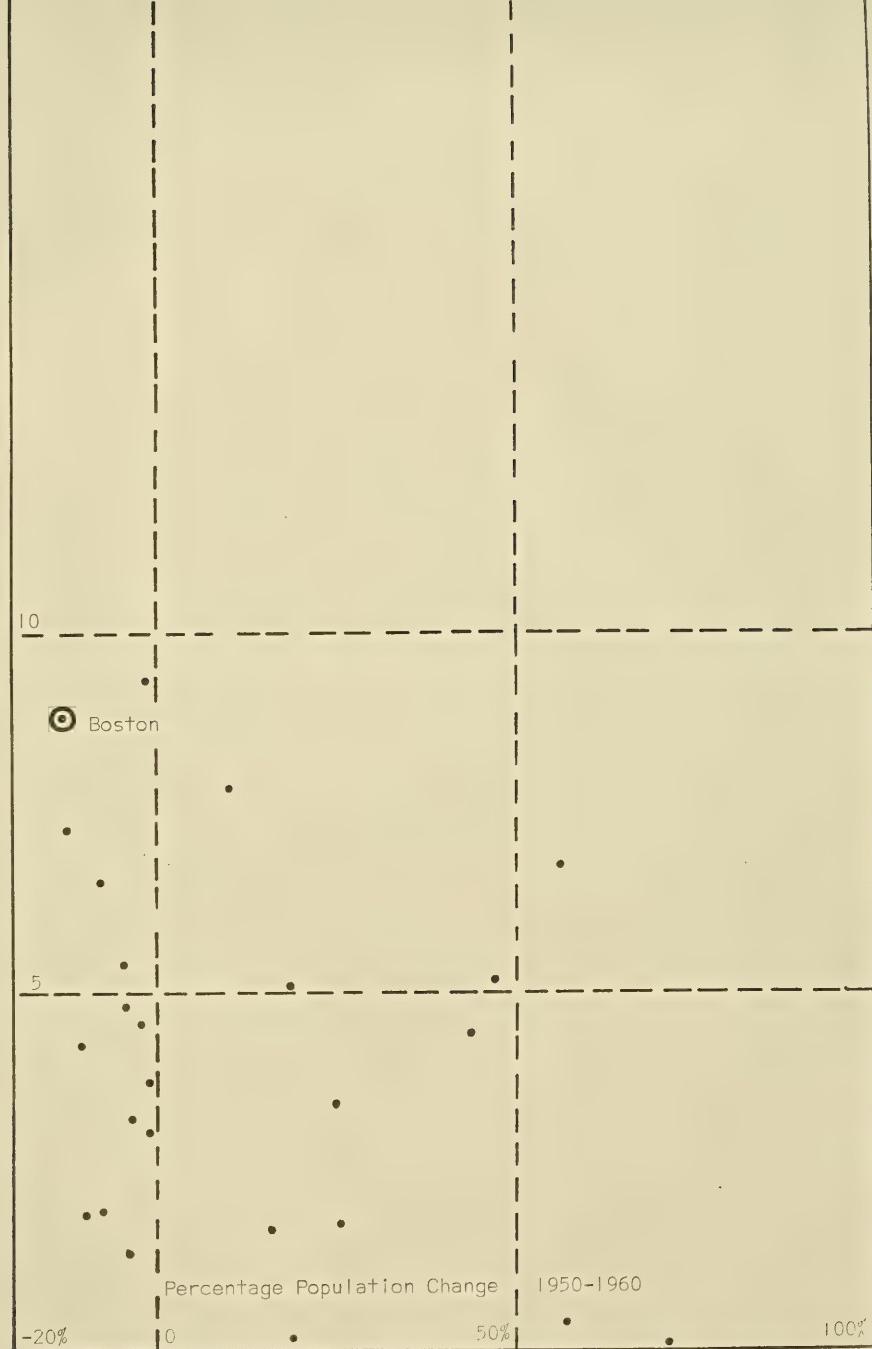


Fig. 16.--New Public Housing Units Authorized 1950-1960 per 1000 1960 Population v. Percentage Population Change 1950-1960 for Largest Twenty-Five American Cities (1960).

New Public Housing Units Authorized 1961-1966 Per 1000 1960 Population

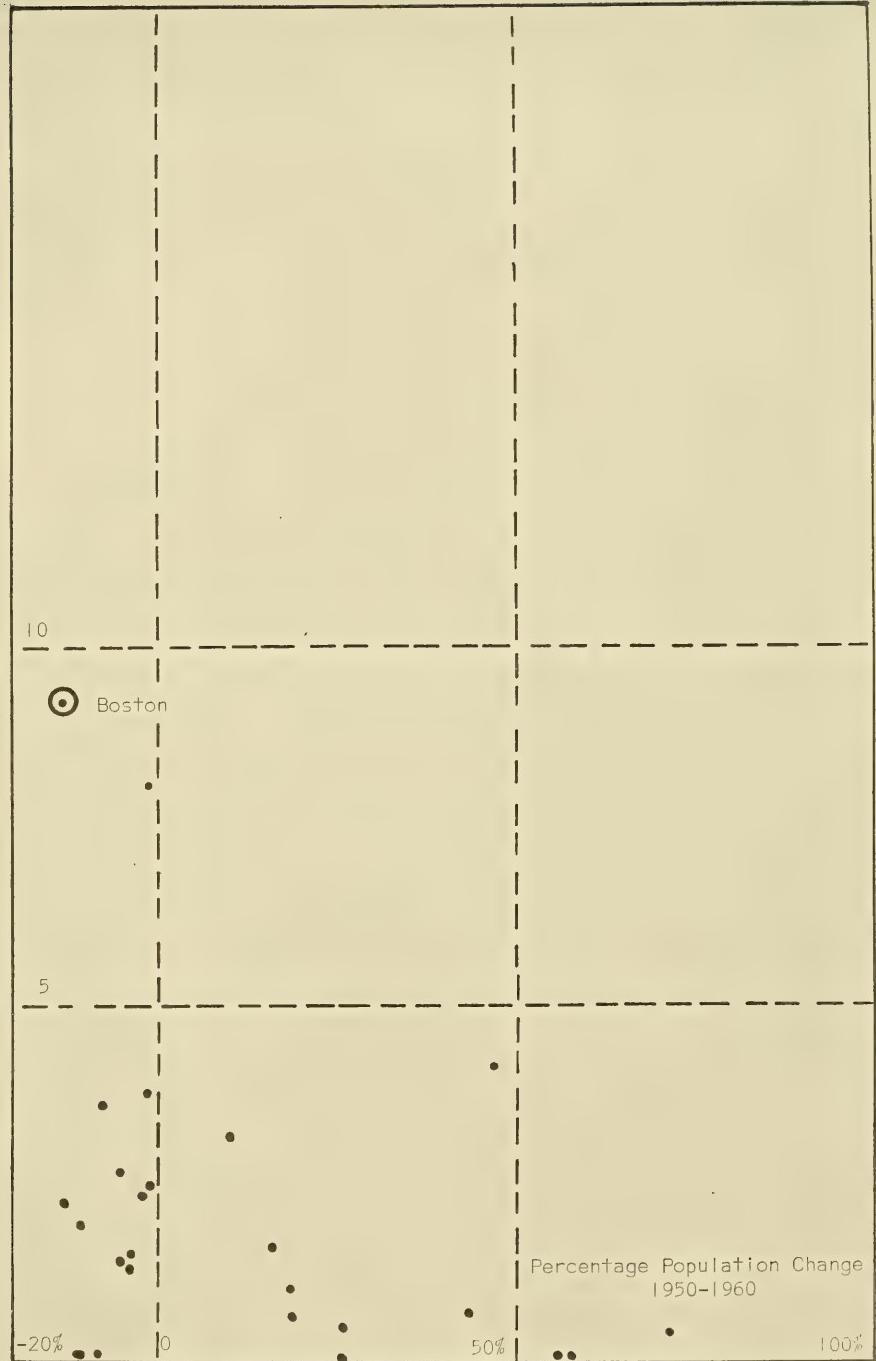


Fig. 17.--New Public Housing Units Authorized 1961-1966 Per 1000 1960 Population v. Percentage Population Change 1950-1960 for Largest Twenty-Five American Cities (1960).

TABLE 13

FEDERAL URBAN RENEWAL GRANT APPROVALS^a FOR
 LARGEST TWENTY-FIVE AMERICAN CITIES (1960)
 CUMULATIVELY 1949-1960 AND 1961-1966

City	Cumulative Grants 1949-1960 Fiscal Year		Cumulative Grants 1961-1966 Fiscal Year	
	\$000	\$ / capita 1960 Population	\$000	\$ / capita 1960 Population
Los Angeles	23,957	9.68	7,759	3.24
San Diego	0	0	0	0
San Francisco	15,190	20.50	90,172	122.20
Denver	2,606	5.27	20,915	42.30
Washington, D.C.	55,825	73.20	3,100	4.06
Atlanta	17,250	35.45	27,004	55.50
Chicago	103,631	29.23	63,871	18.05
New Orleans	2	.03	1,981	3.16
Baltimore	52,217	55.70	23,960	25.50
Boston	15,413	22.10	171,699	246.00
Detroit	29,739	17.82	84,331	50.60
Minneapolis	17,408	35.90	33,267	68.90
St. Louis	45,613	60.60	10,557	14.06
Buffalo	18,511	34.70	13,927	26.15
New York	159,130	20.45	162,575	20.90
Cincinnati	25,892	51.60	53,797	107.40
Cleveland	34,804	39.70	24,294	27.70
Philadelphia	87,036	43.51	159,640	79.80
Pittsburgh	48,720	80.70	48,232	79.80
Memphis	20,620	41.60	29,951	50.30
Dallas	0	0	0	0
Houston	0	0	0	0
San Antonio	1,997	3.40	20,995	35.70
Seattle	500	.89	11,776	21.10
Milwaukee	10,978	14.79	27,260	36.80

^aThis includes grant approvals for urban renewal, code enforcement, demolition projects and community renewal. Source is letter from Robert E. McCabe, U.S. Department of Housing and Urban Development, Washington, D.C. July 31, 1968.

CHAPTER V

COORDINATION BY EXEMPTION OF DEVELOPMENT AND CONTROL PROGRAMS FROM ZONING

Varieties of partial and complete exemption from the Zoning Code have been granted to the non-zoning programs and control systems since 1954. A program or control system which is subject to zoning necessarily shares zoning objectives. A program or control system which is exempt from zoning draws on other sources for objectives.

This chapter is a taxonomy of the varieties of exemptions from zoning, and of the other sources of objectives used by the non-zoning programs and controls. Such a taxonomy is a prelude to the final chapter, which discusses how the non-zoning processes might reach decisions if completely exempt from zoning.

Urban redevelopment corporations.¹ These corporations can be granted power to acquire land which is blighted, and may build and operate housing, commerce or other private activities on such land after acquisition. The statute does not specify positive objectives which redevelopment uses must further, other than blight removal. There is no requirement that owners or residents displaced have rental space on the site after redevelopment; no requirement that the finished

¹Enabling act cited on p. 91, above.

product benefit the disadvantaged or the neighborhood.

Eminent domain power is available to these corporations, and there are property tax concessions after redevelopment. The net profit which such corporations can enjoy is limited by law. The corporation's plan for a redevelopment project must be approved by the Boston Redevelopment Authority. That agency has power to exempt the corporation from specific zoning requirements. The statute indicates that only minor exemptions from zoning, variations from the letter but not the spirit of the law, are permitted. Most urban redevelopment corporation projects have received substantial exceptions from zoning, such as permission to build to 750 feet in a 155 foot height district, or to 268 feet in a 40 foot district.

Public facilities department.² Neighborhood urban renewal projects of the 1960s were generally intended to bring new private and public facilities to the neighborhoods being renewed. The renewal strategy is that new public works will heighten confidence in the old neighborhood, thus stimulating private development. In the Washington Park project especially private construction and rehabilitation led new public construction by years.

Within and without urban renewal projects new school construction has lagged. An investigation in 1966 revealed that new public works planning and programming was coming slowly because too many public agencies and city departments were required by law to participate in

²Massachusetts, Acts of 1966, c. 642.

decision-making.³ A 1966 law created the Public Facilities Department and made it responsible for planning, programming and building several categories of public works including court and administration buildings, fire stations, police stations, libraries and schools. The idea is that the Public Facilities Department can become expert in, for example, getting schools built, while the School Committee can concentrate on operating them. This law removed many checks and reviews on public works, including zoning compliance.

Historic districts.⁴ The conflicts which arise because new buildings or additions to buildings on Beacon Hill and in Back Bay are subject to the requirements of the historic district and to zoning were discussed in Chapter III.

This double layer of authority exists over most historic districts, according to questionnaires on this subject received from 26 cities having historic districts. Twenty-three reported overlapping jurisdictions between the historic district and conventional zoning.

³Anthony G. Adinolfi, It's Time to Build: A Report on Municipal Construction in Boston, (Boston: Boston Redevelopment Authority, 1966).

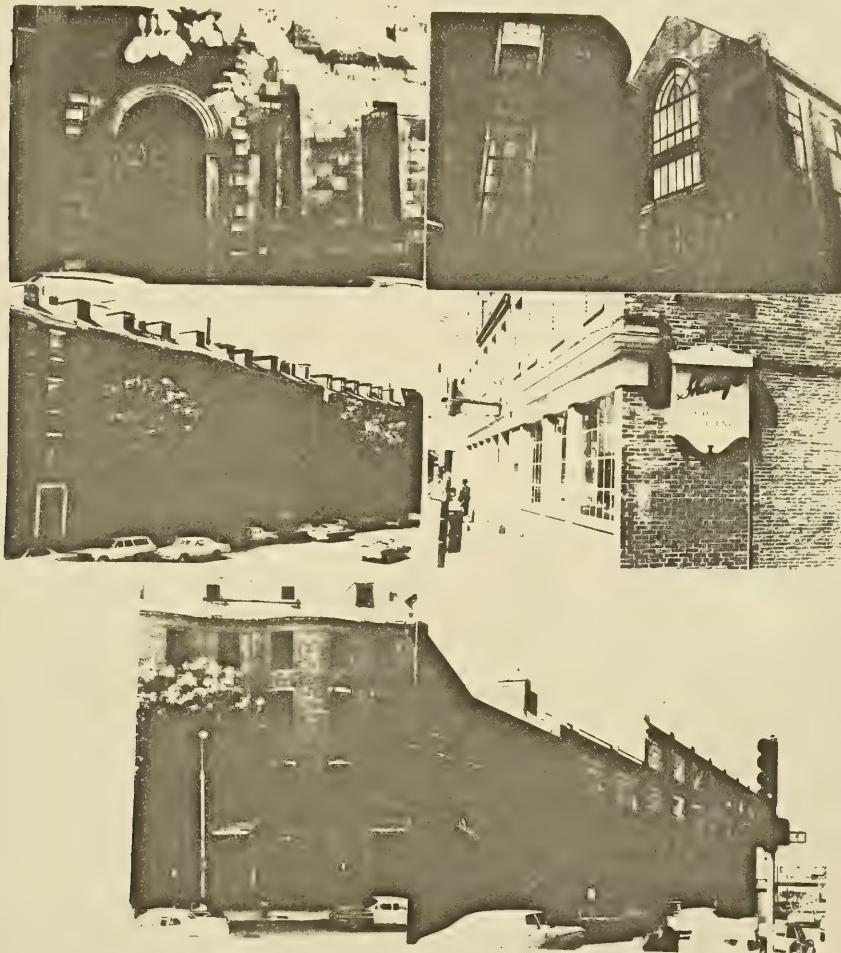
⁴Enabling acts cited on p. 92, above.

⁵In the summer of 1967, questionnaires on coordination between zoning and public housing, urban renewal and historic districts went to the largest 75 cities, and to 25 smaller cities known to have historic districts. Some of the larger cities also have historic districts which are reported on and some of the small cities contacted because of their historic districts volunteered answers on urban renewal and public housing. Of the 75 larger cities, 32 responded. Of the 25 smaller cities, 12 responded.

The German Village Commission of Columbus, Ohio asserts jurisdiction only over architectural facades, and leaves questions of building size and shape to zoning authorities. John Codman of Boston's Beacon Hill district commission insists on the need to control building size and shape as well as facades, and this is the more commonly held view among historic district officials. Richmond, Virginia's Commission of Architectural Review has power to modify zoning area and height requirements in a particular case to protect the integrity of the historic district.

The objective of historic district laws is to preserve and intensify the historic or architectural character which exists within defined boundaries. See Figure 18 below. This means that the requirements which applicants for building permits there must meet can be "read" outdoors, by examining the actual building materials, facades and building forms. One could argue from this that historic district commissions need not pre-regulate, that is, need not adopt and publish the requirements and standards they will use in decision-making. On the other hand, one could argue that they should pre-regulate, because the presence of such outdoor standards makes preparation of written pre-regulations easier. The latter view is the better one. Written standards can be mailed to distant applicants, and can be used by a court geographically remote to review the fairness of an historic commission decision. And written pre-regulation permits a selectivity that "outdoor" standards do not have. Pre-regulation as part of historic district controls would fill a gap that would be left if such districts were exempt from the zoning code and map.

Fig. 18---Buildings whose disposition has been greatly affected by the Beacon Hill District regulations.



27 - 29 Chestnut Street

70 - 72 Mt. Vernon Street

11 - 27 Bowdoin Street

Sharaf's Restaurant on Charles Street

Charles Street Garage

Chestnut Street, Mt. Vernon Street, and Bowdoin Street structures were rehabilitated after permission to replace the buildings was denied. Sharaf's restaurant was not permitted to erect a larger sign than the above. The Charles Street garage was not permitted to add a floor to this structure, though such addition did not violate the Zoning Code.

Boston Historic District commissions do not pre-regulate, though the B.R.A. staff was preparing to do so for the Back Bay District during the spring of 1967. Morrison's⁶ authoritative text on this subject reports only two cities which set forth detailed architectural standards in their ordinances. These are St. Augustine, Florida, and Santa Fe, New Mexico. The questionnaires asked whether historic commissions publish "guidelines of acceptable architectural practice, and thus pre-regulate building activity." This question is not specific enough because all enabling acts for historic districts state the objective of historic preservation, and this could be called an architectural guideline. The question has an obvious preferred-practice answer. So it is not surprising that officials of 12 cities reported having pre-regulation guidelines, and only 8 cities reported having none.

Public housing and urban renewal. In 1965, 1966 and most of 1967 there were conflicts in Boston between the dimensional requirements of zoning, and both public housing and urban renewal building proposals. The architects reviewing public housing and urban renewal designs found that arrangements of buildings which met the objectives of these public programs violated the yard, minimum lot size, parapet setback and other dimensional requirements of the zoning code. It was not always a case of zoning being more restrictive than public housing or urban renewal, because the public programs often required features, such as landscaping, internal sidewalks, and private yards, which were not required by zoning. The public projects frequently contained fewer dwelling units than the

⁶Jacob H. Morrison, Historic Preservation Law, (National Trust for Historic Preservation, 1965).

maximum permitted by zoning law.. The conflict was usually over method of control: there were on the one hand the detailed regulations of zoning intended to be strictly enforced by building department clerks having no power to permit building designers to vary from the regulations, and on the other hand there was the design review methods of public housing and urban renewal, which is a dialogue between public and private environmental designers. For almost three years the conflict was resolved by the Board of Appeal granting zoning variances to projects sponsored by the Boston Housing Authority and Boston Redevelopment Authority.⁷

In September 1967 the Boston Zoning Commission adopted three amendments to the Zoning Code to accomplish coordination between zoning, public housing and urban renewal.

I. Urban Renewal Zoning Districts were added to the zoning code. These can be fastened onto any future public housing site or onto those sites within urban renewal projects which are to be acquired, assembled and sold to developers subject to urban renewal controls. Within these Urban Renewal Districts only three requirements of the Zoning Code apply: 1) permitted uses of land or buildings according to one of the conventional zoning districts; 2) a maximum floor area ratio; and 3) minimum off-street parking standards. None of the many dimensional requirements of the Boston Zoning Code apply: no minimum lot size, height, yard, open space per dwelling unit, parapet set-back, etc. These dimensional matters would be controlled by urban renewal

⁷See Tables 18 and 19.

documents and negotiation between the developer and the local renewal authority, or by the local housing authority.

2. Within public housing and urban renewal housing groups located within residential zoning districts, commercial shops and services primarily for the convenience of residents would be allowed, without requiring action by a zoning board.

3. An exception to the zoning code can be granted by the Board of Appeal for a building or parcel of land which is part of a public housing project, or is within an urban renewal project (including property which will remain in private ownership throughout the urban renewal effort), in order to further objectives of the public housing program or an urban renewal plan.

This power is intended for public housing and urban renewal sites which have not been rezoned to the Urban Renewal District, or which need additional relief besides the generous terms of the Urban Renewal District, and for privately owned land which is within the "rehabilitation" portion rather than the "acquisition" portion of urban renewal project areas. The Board of Appeal in the past relied on its power to grant variances for hardship to further public housing and urban renewal construction. This was a legal fiction, because the hardship variance is supposed to depend on unique existing site conditions. The amendment places the Board of Appeal on firmer legal grounds by expressly giving them the power to grant particular exceptions which further

coordination between zoning and public housing or urban renewal objectives.⁸

These 1967 amendments to the Boston Zoning Code which placed public housing and urban renewal construction and changes of use in a favored position under zoning did not require changes in zoning, public housing or urban renewal enabling acts. The agency in another city with power to amend its zoning code could do what Boston's Zoning Commission did, because zoning, public housing and urban renewal enabling acts are similar in most states to Massachusetts. The following paragraphs discuss how well these enabling acts and court decisions support a zoning code regulation favoring public housing and urban renewal.

Of the 50 states, 43 possess statutes which subject public housing to local zoning, building, and health ordinances.⁹

Massachusetts law provides typically that ". . . every project of a housing authority shall be subject to all laws and all ordinances, by-laws and regulations of the city or town in which it lies, relating to the construction and repair of buildings, town planning, zoning, and the protection of the public health," but with two building-law exceptions: one pertaining to projects leased from the federal government, and one pertaining to certain building types

⁸The need for this code amendment was established by the Brookline case, cited on page 87.

⁹The seven states whose legislation lacks this requirement are Arizona, Illinois, Minnesota, Nevada, New Mexico, Utah and Wyoming.

defined in the statute itself.¹⁰

A majority of the states--33 in all--do empower municipalities to change their zoning and building laws to accommodate public housing projects.¹¹ The most typical provision occurs within the framework of a Housing Cooperation statute, and contains language similar to the following from Louisiana: "For the purpose of aiding and cooperation [with] housing projects, any state public body may upon such terms as it determines, with or without consideration, . . . plan or replan, zone or rezone any part of such state public body; or make exceptions to any of its building regulations and ordinances. Cities, towns, or incorporated villages may also change their maps."¹² In its effect, such a statute is the same as Massachusetts.¹³ Public housing in Massachusetts, including Boston, therefore stands in

¹⁰Massachusetts, Annotated Laws (1965), c. 121, sec. 265.

¹¹All fifty states except these seventeen empower municipalities to change their zoning and building laws to accommodate public housing projects: Arizona, Colorado, Connecticut, Delaware, Idaho, Iowa, Kansas, Maryland, Michigan, Minnesota, Missouri, Nevada, New Mexico, North Dakota, Utah, Wisconsin, Wyoming.

¹²Louisiana, Statutes Annotated (1965), c. 40, sec. 533.

¹³Massachusetts, Annotated Laws (1965), c. 121, sec. 26 EE(d): "For the purpose of complying with the conditions of federal legislation, . . . or to aid and cooperate in the planning, construction, or operation of a [housing] project of such an authority, a city or town, or the appropriate board or officer thereof on behalf of such city or town, may upon such terms, and with or without consideration, do or agree to do any or all of the following things, as such city, town, board or officer, as the case may be, may: (d) establish exceptions to existing ordinances and by-laws regulating the design, construction, and use of buildings. . . ."

substantially the same relationship to zoning and building laws as do the projects of a majority of the other states.

Case law indicates that the power to zone or rezone in order to aid public housing will be construed liberally by the courts, so long as adequate procedures are used. The power to rezone derives from the police power, as does the power to zone originally, and hence must relate to the "public health, morals, safety, and general welfare."¹⁴ Since the purposes of public housing square with all of these goals, arguably no rezoning to accommodate a public housing use could ever be invalidated as capricious or arbitrary, within the limits of good faith and adequate building design by its sponsors.

In New Jersey, Passaic Junior Chamber of Commerce v. Passaic Housing Authority¹⁵ indicated that approval of the project and its location by the local governing body under the appropriate housing statute would cure a violation of the zoning ordinance. Even more favorably, the Ohio and Georgia courts in St. Stephen's Club v. Youngstown Metropolitan Housing Authority,¹⁶ and West v. Housing Authority of Atlanta,¹⁷ permitted condemnation of land for a housing project even though the requisite rezoning had not yet taken place. The New York

¹⁴Leahy v. Inspector of Buildings of City of New Bedford, 308 Mass. 128; 31 N.E.2d 436 (1941).

¹⁵45 N.J. Super. 381, 132 A.2d 813 (1957).

¹⁶160 Ohio St. 194; 115 N.E.2d 385 (1953).

¹⁷211 Ga. 133, 84 S.E.2d 30 (1954).

rezoning law was upheld in a 1947 case, Borek v. Golder.¹⁸ Each of these cases involves rezoning for individual housing projects, rather than the granting of a blanket exemption. It should be noted that the "individual solicitation" by developers which worried the court in Eves v. Zoning Board of Adjustment of Lower Gwynedd Township,¹⁹ the leading case on spot zoning, does not exist where the amendment is for a public rather than a private use.

Whether or not a housing authority can be granted a total exemption from zoning ordinances rather than a project-by-project review, by exercise of the special power to rezone, depends on the construction to be given the statutory demand that authorities be "subject to" local regulations. In one sense a housing authority obviously can be in accord with a local ordinance which excepts it completely from conformity with the master plan. On the other hand, the legislative intention in granting the power to zone or rezone might well be to permit flexibility in public housing location and design, while maintaining the procedural requirements of a public hearing and review by the municipal legislative body before rezoning for each project could occur. No case law bears on this point. The courts' decision will be largely one of determining legislative intent: is the power to rezone broad enough to cancel the requirement of zoning conformity, or should that power be restricted to a project-by-project review?

¹⁸74 N.Y.S.2d 675; 190 Misc. 366 (1947).

¹⁹401 Pa. 211, 221, 164 A.2d 7 (1960).

In favor of permitting total exemption, there exists a large body of law holding public building immune from local zoning. It may be argued that cities should be permitted to create for public housing, by rezoning, the same exemption which they can create for other public services. In a Georgia case, McCallum v. Bryant,²⁰ a town ordinance permitting public service buildings in any zone was upheld, allowing erection of governmental administration buildings in a residential area. A similar provision for public or municipal buildings was upheld in a case involving the erection of an incinerator in Hewlett v. Town of Hempstead,²¹ in New York. In Bailey v. County of Los Angeles,²² which upheld a county zoning amendment permitting juvenile homes in single family residence districts, the California court reasoned that since a county can exempt itself from the provisions of its basic zoning ordinance, it can also amend the ordinance to permit a governmental use. Cincinnati v. Wegehoff,²³ a 1928 Ohio case, upheld the city in exempting its own municipal buildings from restrictions as to the type of structure permissible in a residential zone. And in Texas, McAllen v. Morris²⁴ in 1948 approved

20211 Ga. 98; 84 S.E.2d 39 (1954).

21133 N.Y.S.2d 690, 3 Misc.2d 945, aff'd, 150 N.Y.S.2d 922, 1 A.2d 954 (1954).

22293 P.2d 449, 46 Cal.2d 132 (1956). For other cases upholding rezoning or exemption of municipal structures, see McAllen v. Morris, 217 S.W.2d 875 (Tex. Civ. App. 1948) and Wicker Apartments, Inc. v. Richmond, 199 Va. 263, 99 S.E.2d 656 (1957).

23119 Ohio St. 136; 162 N.E. 389 (1928).

24217 S.W.2d 875 (Tex. Civ. App. 1948).

an amendment which made the zoning ordinance inapplicable to municipal structures, where deemed necessary for the public good by the Board of Commissioners of McAllen, and permitted a fire station in a residential neighborhood.

There also exists authority for the exemption of public utilities: in Yahnel v. Board of Adjustment of Jamesburg,²⁵ the New Jersey court interpreted the zoning enabling act²⁶ to hold that no zoning ordinance or regulation shall apply to the buildings or structures of a public utility, if, upon the petition of such public utility, the Board of Public Utility Commissioners shall, after hearing upon motion, decide that the proposed building is reasonably necessary for the service, convenience, and welfare of the public. Boston zoning enabling laws have since 1924 provided similarly for public utilities.²⁷ In California, Thompson v. Los Angeles²⁸ upheld a city zoning ordinance amendment which granted an exemption for the erection of electric power transmission lines in any district.

In many cases the right to exemption arises from classification as a "governmental" rather than a "proprietary" function, and in some cases any authority possessing eminent domain powers is considered

²⁵76 N.J. Super. 546, 185 A.2d 50, aff'd, 79 N.J. Super. 509, 192 A.2d 177 (1962).

²⁶New Jersey, Statutes Annotated (1967), c. 40, sec. 55-50.

²⁷Enabling Acts cited on p. .

²⁸82 Cal. App.2d 45, 185 P.2d 393 (1947).

exempt.²⁹ It seems likely that under the former standard public housing would be pigeonholed as a governmental function rather than a proprietary one--there is dictum to this effect in State ex rel. Housing Authority of St. Louis County v. Wind,³⁰--though the distinction is ill-defined and much criticized.³¹

The courts will probably prove more favorable to a delegation of legislative power to rezone (if, under the statute, determination of location and design for each separate housing project is considered an act of rezoning) where, as in the Yahnel case a public hearing is provided and records are kept. Further, some preregulation of building location and design by the housing authority, in the form of a general set of objectives and standards, would provide a yardstick by which the courts could judge whether an action is or is not arbitrary and capricious. Although the public housing use in any district probably would not be subject to attack, it does seem probable that height, floor area ratio, or site location might be effectively challenged as unreasonable by neighboring landowners. If criteria applicable to

²⁹For a list of cases holding the eminent domain power residing in a state agency implies a zoning exemption, see Note, "Municipal Power to Regulate Building Construction and Land Use by Other State Agencies," Minnesota Law Review, XLIX, (1964) 284 Note 55.

³⁰337 S.W.2d 554 (Mo. 1960).

³¹James B. Sales, Comment, "The Applicability of Zoning Ordinances to Governmental Land Uses," Texas Law Review, XXXIX (1961), 316, 319; Note, "Municipal Power to Regulate Building Construction and Land Use by Other State Agencies," Minnesota Law Review, XCIX (1964), 284, 296. See discussion and citations in Daniel R. Mandelker, Managing Our Urban Environment, (Indianapolis: Bobbs-Merrill Co., Inc., 1966), pp. 206-208.

these factors, and to qualitative elements of design, were adopted by the housing authority or even written into the enabling amendment, the courts could measure complaints against an approved planning standard.

In conclusion, there exists substantial precedent for the exemption of public uses from zoning control, and the courts have interpreted favorably the power to rezone in cooperation with public housing. Such precedent indicates that a court would uphold the granting of total exemption to public housing from zoning under typical state enabling acts. There are no cases directly on this point. Courts are concerned about the possible unfairness when a particular private developer gets special zoning treatment, but these cases are less applicable to a public developer such as a housing authority. Both public housing and zoning have "public health, morals, safety and general welfare" objectives. Public housing is a more obvious means of furthering these objectives than is zoning. It is unlikely that a court would require public housing to conform to zoning administration, if a local governing body has declared this unnecessary.

Thirty-two states authorize their cities to plan or replan, zone or rezone in order to assist urban renewal projects.³² The language and scope of most of these statutes closely approximates the authority given to cooperate with public housing. At least three states³³--Delaware, Massachusetts and Oklahoma--require compliance of urban renewal

³²All states except California, Connecticut, Delaware, Florida, Hawaii, Idaho, Indiana, Maine, Maryland, Minnesota, Nevada, New York, Ohio, Oklahoma, Pennsylvania, Tennessee, Utah, Wisconsin.

³³Delaware, Code Annotated (1953; 1966 Pocket Part) c. 31, sec. 4525. Massachusetts, Annotated Laws (1965) c. 121, sec. 2633. Oklahoma, Statutes Annotated (1959; 1967 Pocket Part) c. 11, sec. 1708.

with the master plan, without specific provision for amendment in favor of urban renewal, and several other states provide only that the redevelopment commission can propose zoning changes.

There is no case law bearing on urban renewal immunity from zoning disclosed in any of the indices. Much of the reasoning and precedent given above for predicting court approval of a local regulation exempting public housing from zoning likewise applies to an exemption of urban renewal from zoning.

We have seen that the Boston Zoning Code amendments exempting public housing and urban renewal from some zoning requirements is fairly well supported by a reading of the court decisions. Any city could do what Boston did towards coordinating public housing, urban renewal and zoning.

Yet present state public housing and urban renewal legislation could be more clear regarding power to exempt or except public housing or urban renewal from zoning. One section typically states that such projects shall be subject to building and zoning laws, and another section empowers the local agency responsible for zoning amendments to make exceptions for public housing or urban renewal construction. This statutory uncertainty may be a reason why so few cities reported zoning procedures written specifically for public housing or urban renewal. The questionnaires indicate that almost no cities have enacted special zoning for public housing or urban renewal. Only Seattle officials report that public housing has a special zoning status not shared by private housing. In Washington, D.C. Congress exempted the vast Southwest Urban Renewal Area Redevelopment from

zoning, but subsequent District of Columbia projects must comply with zoning.

PUD (Planned Unit Development) provisions, which are regulations or procedures which apply to large scale projects sponsored privately as well as by a public agency, were available in most of the cities responding.³⁴ PUD could be applied to public housing projects or new housing groups in urban renewal areas, where such projects meet the minimum size requirements of the PUD. Twenty-one cities reported having PUD for use in urban renewal zoning, five reported that PUD amendments were in process, and only four reported having urban renewal and zoning but no PUD regulations.

One city reported that it changed its zoning procedures as they apply to urban renewal projects in order to reduce the number of agencies who must review urban renewal plans. Before these amendments the urban renewal agency, Plan Commission, Board of Zoning Appeal and City Council approved most urban renewal construction. The amendments eliminated the Board of Zoning Appeal from the list.

Public housing more than urban renewal is constrained by zoning administration, according to the questionnaires. It was asked whether public housing and urban renewal agencies automatically get what they ask for in zoning changes, or whether the city council or other local agency having authority over zoning participates substantially in

³⁴Jan Krasnowiecki and Richard F. Babcock, Legal Aspects of Planned Unit Development, Urban Land Institute Technical Bulletin No. 52, (Washington: Urban Land Institute, 1965). Symposium on "Planned Unit Development," Univ. of Pennsylvania Law Review, CXIV, No. 1, (November, 1965) (Entire issue).

deciding what zoning modifications these projects should get.

Officials of 17 cities reported substantial participation of a zoning agency in deciding whether there should be rezoning for public housing, while officials of 7 cities reported that the public housing agency gets whatever zoning it asks for. In the case of urban renewal, officials of 13 cities reported substantial participation by a zoning agency, while officials of 15 cities reported that the urban renewal agency gets whatever zoning it asks for. Officials of 9 cities reported friction between objectives and implementation techniques of urban renewal planners, and zoning staff. Officials of 20 cities reported an absence of such friction.

Edwin B. Forrest, Zoning Administrator of Pittsburgh, answered the question about friction:

Urban renewal planners tend toward individual and special design aspects and techniques, suitable for a specific site, but not readily adaptable on a broad base applying to various sites and areas, as per the zoning approach. Urban renewal planners are apt to lose sight of existing zoning limitations, in their zeal to provide a good plan. In short, the old story--design first, regulations afterward.

Mr. Forrest suggests that urban renewal planners should be exempt from zoning control:

Zoning is only a means to an end, and if the end can be achieved by agreement on plan by urban renewal planners and responsible City people, there is no need for zoning during life of project. However, we are advised that our present enabling legislation on zoning does not permit exemption.

According to the questionnaires Mr. Forrest speaks for a minority of city officials on the exemption issue. Through the questionnaires officials voted 28-3 against total exemption from zoning for

public housing, 28-4 against total exemption from zoning for urban renewal, and 16-7 against total exemption from zoning for historic district commissions.

Boston experience has demonstrated that coordination between zoning and public housing or urban renewal can be improved by amendments which give these public projects immunities and privileges not available to private development. Boston's example would seem especially appropriate in those cities reporting that the public housing agency or urban renewal agency gets substantially what it wants in zoning permission, so that zoning as it applies to those public projects is an unnecessary ritual.

This Chapter has shown that the non-zoning processes have a variety of degrees of exemption from zoning, ranging from the historic districts, which have no exemption, to the Public Facilities Department, with complete exemption. The trend is towards exemption: those discussed for the Public Facilities Department, public housing and urban renewal were first available in 1966 and 1967. Urban redevelopment corporations have enjoyed zoning privileges in Boston since 1960.³⁵

The non-zoning processes have a variety of sources of objectives. The historic districts have the rich tangible, outdoor character of the districts to be preserved. Urban Redevelopment Corporations have Boston Redevelopment Authority review procedures, including a public hearing. The urban renewal program is guided by project plans prepared with the participation of neighborhood residents, and a review process to

³⁵Massachusetts, Acts of 1960, c. 652.

a new style of zoning.

Based on Boston experience and studies, we can offer an explanation for the strong opposition among questionnaire respondents to totally exempting public housing or urban renewal from zoning. Zoning is basically deterministic and monopolistic. The basis for zoning is the regulation of free competition between property owners. Zoning prevents over-competition. The rules as to what is over-competitive becomes less restrictive and the competition becomes more intense as one nears the center of the city. Thus there is a predetermined city form contained within the zoning ordinance and map, and this form is supposed to emerge on the ground as zoning referees competition between land owners.³⁶ It is not surprising, then, that the idea of excepting two classes of competitors (public housing and urban renewal developers) from the struggle for space is shocking to many who know the free competition ideology of zoning.

In Boston, where so much new construction now occurs on land owned or in the process of being sold by a public agency or redevelopment corporation, a planning principle is replacing the free competition theory of zoning. The planning principle holds that every part of the city should be used or developed according to democratically determined objectives which serve primarily the users rather than the owners of land.³⁷ In such a theory, excepting public housing or urban renewal from zoning is an obvious and natural thing to do, because these programs

³⁶See Table 2, p. 35 and discussion pp. 32-36.

³⁷This concept is further developed in Chapter VIII, pp. 194-196.

are carrying out public objectives for the benefit of users of the sites. Thus in 1965 and 1966 coordination problems between zoning, public housing or urban renewal were somewhat ideological: a city built according to free competition between property owners, or a city planned to serve various public and common objectives. As more and more Boston neighborhoods participated in urban renewal or historic preservation planning, the planned city idea became dominant.

The Massachusetts legislature can and does enact special acts applicable to only one city. Most state legislatures are constrained by constitutional prohibitions against special acts.³⁸ State legislatures attempt to overcome this by classifying cities by size, but courts sometimes strike down such legislation by holding the classification to be unrelated to the purpose of the law in question, and an attempt to evade the prohibition against special legislation.³⁹ Other cities have home rule power, but legislative practice has been to enable home rule cities to control their environment through general laws applicable to all cities in the state.⁴⁰

Massachusetts legislative power to enact special laws for

³⁸"All states, except for the northeastern states of Connecticut, Delaware, Massachusetts, and New Hampshire, now have some constitutional provisions either restricting the use of special legislation, or expressing the need for general legislation." John M. Winters, State Constitutional Limitations on Solutions of Metropolitan Area Problems, (Ann Arbor: U. of Mich. Law School, 1961), p. 85, quoted in Daniel R. Mandelker, Managing Our Urban Environment, (Indianapolis: Bobbs-Merrill Company, Inc., 1963), p. 90.

³⁹This occurred in Redevelopment Authority of Kansas City v. State Corporation Commission, 171 Kan. 581, 236 P.2d 782 (1951).

⁴⁰Mandelker, 67.

Boston has been exercised first in setting up and then dampening the collision of urban renewal with zoning:

1. Many of the programs and controls responsible for improvement of Boston's rate of construction in the 1960s were special acts. The historic districts; the merging of planning functions with redevelopment powers; the Public Facilities Department. Without special acts, Boston might not have made such substantial improvement in rate of construction in the 1960s, and might not have been able to alter the objectives of construction.
2. Several of the exemptions to zoning granted these newer programs were accomplished by special acts. Power of the Boston Redevelopment Authority to exempt urban redevelopment corporations from zoning, and the immunity of the Public Facilities Department from zoning are prime examples.

Let us consider the case of a large central city whose private construction is lagging, which would like to initiate a variety of non-zoning programs and controls to step up its construction rate, but cannot petition its legislature for special acts because of constitutional prohibition. Such a city would have a handicap that Boston was free of. It might overcome this by using conventional urban renewal, public housing and urban redevelopment corporation enabling acts, and by amending its zoning code to exempt these programs from zoning. Such a city would not have as strong a legal base as Boston. For example, there are the ambiguities discussed previously⁴¹ in the wording of standard public housing and urban renewal legislation regarding

⁴¹Pp. 125, 130.

whether these programs can be exempted from zoning.

The typical central city under discussion might petition the legislature for stronger general laws giving all cities in the state more power to undertake or encourage development, and to give more immunity from zoning to such programs. Representatives from cities which are not suffering an obsolescence crisis would resist such amendments to the general laws, struck by the familiar fear of increasing public power. These representatives might also resist replacing the conventional zoning enabling act with one that would permit the proposals of this Thesis to operate: routine use of hearings, professional hearing examiners, expressed user objectives, responsive controls, and the other reforms suggested in the final chapter.

One legislative strategy in such a state would be a comprehensive amendment of all its urban development laws simultaneously. A study similar to this Thesis but using data and experience from representative cities in that state would be invaluable in the preparation and adoption of such a comprehensive reform.

CHAPTER VI

ANALYSIS OF 1965-1966 BOARD OF APPEALS

DECISIONS ON ZONING¹

An applicant not able to receive a building permit because of a zoning obstacle may appeal to the Board of Appeal, which has power to order that a building permit be granted.² All zoning appeals made during 1965-1966 were analysed with the assistance of the City of Boston Data Processing Center, and findings are reported in this chapter. The zoning appeals which reached the Board of Appeal during that period are the first 690 appeals taken under the new Zoning Code which became effective at the beginning of 1965.

Analysis of these Board of Appeal decisions is revealing in two ways: (1) The great volume of appeals and their pattern shows that the new Zoning Code and maps are not bringing into existence the

¹For other studies of Board of Appeals performance see "Zoning Variances and Exceptions: The Philadelphia Experience," U. of Pennsylvania Law Review, CIII, (1955), 516.

Lewis B. Merrifield III, "The General Welfare, Welfare Economics and Zoning Variances," So. California Law Review, XXXVIII, (1961); "Zoning Variances," Harvard Law Review, LXXIV, (1961), 1396.

²Massachusetts, Acts of 1956, c. 665, sec. 8, 9 and 10: Zoning Code (1965), sec. 6-2, 7-2. See generally William Weismantel, Procedures of the New Zoning Code, (Boston: Boston Redevelopment Authority, March 1965).

building form idealized in 1950-1954 studies. (2) The Board of Appeal with almost meaningless guidance from the Zoning Code is operating as a free-wheeling environmental decision process. The Board's performance demonstrates how a non-zoning process might operate where each applicant for a building permit must face an official or officials having discretion to approve or deny an application (or recommend one of these), but has a minimum code or statutory guidance on which to base such a decision.

The zoning appeals function has become a major part of Boston zoning decision-making. Fifty-two percent of the building permits issued during this period for dwelling units were granted only after approval by the Board of Appeal. The estimated cost of construction of building permits issued after appeal amounted to 36 percent of the cost of construction of all permits issued during that period. Table 14. All 13 tables for this chapter are together at the end of the chapter. Tables 14-27.

An applicant seeking a building permit from the Board of Appeal can ask for a variance because "a literal enforcement of the provisions of [the] zoning regulation would involve a substantial hardship,"³ or ask for a different interpretation of the Zoning Code than the one made by the Building Commissioner in first refusing to issue a permit. Or the applicant can ask for one of the 70 or more types of special exception whose terms are set out in the Zoning Code.

The variance device is really a non-zoning control process operating within formal zoning. It applies to the situation where zoning is unworkable, where there are "conditions especially affecting such parcel or such building, but not affecting generally the zoning district

³Massachusetts, Acts of 1956, c. 665, sec. 8.

in which it is located."⁴ The exception device is part of the zoning system, because an "exception . . . shall be applicable to all of the districts of a particular class and of a character set forth in such zoning regulation or amendment."⁵ Standards established by the Code for exceptions are more specific than variance standards.⁶ Many of the standards in fact being used by the Board in granting variances have been derived by statistical analysis of Board decisions, and are reported here.

The variance was sought in 549 cases or 79 percent of the appeals by number or 59 percent by cost. In 77 appeals an exception was asked for. In only 3 appeals a code interpretation was sought. A combination of variance, interpretation or exception was the basis for an appeal in 61 cases. Besides being about seven times more popular, variances were more successful than exceptions before the Board of Appeal. Table 15.

The foregoing percentages taken together show that about 21 percent of all buildings by cost and about 31 percent of all dwelling units received building permits during 1965-1966 through variances granted by the Board of Appeal. These figures are an indictment against the ideal city form proposed by Boston planners in 1950-1954, because they represent construction built contrary to the explicit

⁴Massachusetts, Acts of 1956, c. 665, sec. 9.

⁵Massachusetts, Acts of 1956, c. 665, sec. 10.

⁶Zoning Code (1965) sec. 8-7. Standards for about 70 special exceptions are set out in a total of about 2500 words.

dimensions and use requirements of the Zoning Code and maps. Surely a general law has failed if 21-31 percent of the cases coming under the law are ruled to have "conditions especially affecting [them] . . . but not affecting generally the zoning district in which [they are] located." Ninety-five percent of applicants by cost and 82 percent by number who sought variances during that period were successful.

When an applicant seeks a building permit for two or more buildings at one time, and appeals for one or more permits, this is reported as a group of buildings. A common objection to zoning regulations is their supposed discrimination against a group of new buildings, in favor of the single building on its own lot.⁷ If the Zoning Code is more harsh with building groups than single buildings one would expect the Board of Appeal to rely on its discretionary power to approve a greater percent of building group appeals than single building appeals. But no significant difference in percent of approval was found between the two types of appeals. Table 16.

⁷Eldridge Lovelace and William Weismantel, Density Zoning: Organic Zoning for Planned Residential Developments, Urban Land Institute Technical Bulletin No. 42, (Washington: Urban Land Institute, 1962).

Appeals for either new construction or alteration were significantly⁸ more successful than appeals for change of use. In other words, success on appeal is more likely when the issue involves the size, dimensions or location of a building or an extension to a

⁸Note on statistical test of significance used in this chapter. Two sets of percentages of appeals approved, such as those within and without urban renewal areas, are reported to be significantly different when the two proportions are tested as samples and found to fail the hypothesis that these proportions are the same to a level of .05 significance. For example:

403/526 of zoning appeals approved outside of urban renewal areas (P.1) 77 percent

70/80 appeals approved with urban renewal areas (P.2) 88 percent

$$\text{Hypothesis } P_1 = P_2$$

$$P = \frac{X_1 + X_2}{N_1 + N_2} = \frac{70 + 403}{80 + 526} = .78$$

$$Z = \frac{X_1 - X_2}{\sqrt{\frac{P(1-P)}{N_1} + \frac{P(1-P)}{N_2}}} = \frac{70 - 403}{\sqrt{\frac{.78(.22)}{80} + \frac{.78(.22)}{526}}} = 2.2$$

$$\sqrt{\frac{P(1-P)}{N_1} + \frac{P(1-P)}{N_2}}$$

$$\sqrt{\frac{.78(.22)}{80} + \frac{.78(.22)}{526}}$$

If Z is < -1.96 or Z is greater than 1.96, reject the hypothesis.

$Z = 2.2$, therefore $P_1 \neq P_2$. The proportions are significantly different.

John E. Freund, Modern Elementary Statistics, 2nd. Ed., (Englewood Cliff, N.J., Prentice Hall, Inc., 1960) p. 253.

building, than when the issue is how a building or site may be used.

Table 17. An accepted norm for the quality of a law is its capacity for being upheld on appeal. The above finding indicates that the use requirements of the zoning code are a more successful regulation than its dimensional requirements.

Of the appeals involving change in use, 21 percent of those denied were in the Local Business District, and 19 percent of those approved were in that district. The difference between these two percentages is not statistically significant, which indicates that there may in fact be such a dualism of local and general business centers in Boston.⁹ If the use regulations of the local business district were disproportionately inclined not to be upheld by the Board of Appeal, this would indicate that the Zoning Code should not distinguish local from general business districts.

The urban renewal program is not the major source of zoning appeals. Seventy-six percent of all appeals were located outside of urban renewal areas. Of the 84 appeals involving urban renewal disposition sites, where the developer is under contract with the redevelopment authority to develop land being sold by that public agency, all

⁹Garrison studied the locations and markets of business firms in Spokane and compared these empirical findings with the zoning maps. "The proposed zoning ordinance developed, using as an assumption of two types of goods, a bimodal stratification of business centers into neighborhood and community classes. . . . If any bimodal character exists, it is between nucleated shopping and arterial types. The two have differing functional characters and differential location habits." Pp. 124-125, William L. Garrison, and others, Studies of Highway Development and Geographic Change, (Seattle: U. of Wash. Press, 1959).

(100 percent) were approved by the Board of Appeal. Table 18.

There were 16 appeals by the Boston Housing Authority to overcome zoning obstacles to applications for building permits for public housing units. Fourteen of the 16 appeals were from disposition sites within urban renewal project areas. There was opposition to approval at 3 of the 16 public hearings. In all 16 appeals the Boston Housing Authority was successful. Table 18. This record of perfect success of the public housing and urban renewal authorities before the Board of Appeal on zoning issues show that it was an unnecessary delay to require zoning compliance of these programs in the first place. This record supports the 1967 zoning code amendments giving these programs special zoning immunity.

The Boston Redevelopment Authority (B.R.A.) is the official planning agency for Boston, and in that capacity is required to make recommendations to the Board of Appeal for certain types of zoning appeals. For other appeals it may make recommendations but is not required to. The B.R.A. has 21 days in which to make a recommendation to the Board of Appeal from the time B.R.A. receives notice of appeal. The B.R.A. failed to make a timely recommendation in 125 cases or 53 percent of 236 cases where a recommendation was required by law. This failure demonstrates an improper use of professional staff. The B.R.A. staff in fact prepares the recommendation to the Board of Appeal, and if the staff had been given authority by the B.R.A. to submit recommendations directly to the Board of Appeal, it is probable that timely recommendations would have been made in 100 percent rather than in 47 percent of the cases. The B.R.A. insisted on reviewing and

voting on every staff recommendation before submitting it to the Board of Appeal, but the B.R.A. met approximately monthly, so was bound to miss many of the 21 day deadlines.

The power to make decisions affecting private applicants is not one that an administrative agency cannot delegate lightly to its professional staff. But the power to make recommendations to another agency is a proper one for a professional staff.

The B.R.A. failed to make a recommendation for 380 appeals or 55 percent of all appeals. B.R.A. recommended approval 181/310 or 58 percent of the occasions when its recommendations were made in the time required by law. B.R.A. is thus more strict than the Board of Appeal, which approved 81 percent of all appeals. The effect of B.R.A. recommendations on Board of Appeal decisions is statistically significant. The Board of Appeal approved 89 percent of those appeals for which B.R.A. recommended approval, but only approved 72 percent of those for which B.R.A. recommended denial. Table 20.

The finding that B.R.A. recommendations influenced Board of Appeal decisions, keeping in mind that the B.R.A. recommendations are prepared by its professional staff, shows the value of professional recommendations in this kind of decision process.

The effect of opposition to an appeal at the public hearing before the Board of Appeal is a very significant influence. Appeals at which there was no opposition were 90 percent successful, while opposed appeals were approved only 60 percent of the occasions. Table 20. This finding is especially meaningful in light of the identity of the opposition at Board of Appeal hearings. Members of the General Court,

representatives of neighborhood and civic associations and of public agencies speak at hearings. Many residents who are tenants rather than property owners speak. The chair does not ask whether a would-be speaker owns property. Thus the Board of Appeal hearing is an opening by which many points of view enter the decision process, and with great effectiveness, according to these findings.

Of all appeals for permits ranging in cost of construction from no cost to \$9999, 74 percent (268/363) were approved. Of all appeals for permits ranging in cost from \$10,000 or more 88 percent (289/327) were approved. This is a significant difference in favor of the more costly buildings.

The effect of opposition upon the decision of the Board of Appeal can be measured by the number of appeals in which there was opposition and a denial by the Board of Appeal, divided by the total number of opposed appeals. If the Board denied every opposed appeal, this percentage would be 100 percent. If the Board of Appeal gives the zoning appeal whose estimated cost of construction is high the same respect as the appeal for the low cost project, the percentage of opposed denials over total opposed appeals should be the same for both. In fact, the percent of opposed appeals denied divided by the total opposed appeals is 52 percent for the (58/112) appeals opposed whose costs ranged from no cost to \$9999, while the same percentage was 26 percent (27/103) for appeals opposed whose estimated cost ranged from \$10,000 to \$200,000 and over. This difference is statistically significant, indicating that the Board of Appeal is more inclined to approve an appeal despite

opposition when the building cost is high, than when the building cost is low or there is no cost. Table 22.

There are six residential zoning districts where the average income was \$6400 or more in 1960 (S.3, S.5, R.5, H-2-65, H 4, and H 5 Districts), and four residential districts where family income was \$5800 per year or less in 1960 (R.8, H 1, H 2, and H 3 Districts). In the high income districts appeals were approved 167/233 or 72 percent of all occasions. In the lower incomded districts appeals were approved 217/247 or 88 percent of the occasions. This is a significant difference, tending to show that the Board of Appeal protects high income areas from deviation more rigorously than it protects low income residential areas. There was opposition 100/233 or 43 percent of the occasions in high income districts. There was opposition 70/247 or 28 percent of the occasions in low income districts. This is a significant difference. Opposition was more effective in getting Board of Appeal denial in a high income district than in a low income district. The ratio of opposed denials to total opposed appeals was 47/100 or 47 percent in high income districts, and 20/70 or 29 percent in low income districts. This is a significant difference. Table 23.

Those who appeal for permits to build more costly buildings probably spend more on lawyers and experts in presenting their appeals to the Board than do those proposing smaller buildings. And appeals in higher income neighborhoods are met with more opposition,¹⁰ and probably

¹⁰"Our findings consistently show that the higher economic status neighborhoods contain relatively more men who belong to formal associations, who frequently attend meetings, and more members who hold office

more articulate opposition, than are appeals in lower income neighborhoods. Decisions in these matters have been political, responding to the force behind a point of view rather than its intrinsic merit. In other words, these findings indicate that the decision process is weighted in favor of more costly buildings, and in favor of the status quo in higher income neighborhoods. This suggests the need for professional expert advocates who might be public officials, but must be independent of the officials or agency which conducts the hearing, to speak against the more costly buildings, for the smaller buildings, against the status quo in higher income neighborhoods, and for the status quo in lower income neighborhoods.

The Board attached conditions to their approval in slightly over half the appeals which they approved. (51 percent). Table 24. This is a vigorous demonstration of responsive controls, where the public power to direct what is built is inserted after the applicant has presented his plan. The applicant often suggests some concession such as a wall, in exchange for some feature such as permission to park automobiles in the rear yard. The Board makes the concession a condition to its permission to operate in the contested manner. Responsive controls by the Board of Appeal are permitted by the Zoning Code, but they are a natural occurrence in any procedure where officials have discretion and decide one case at a time. Responsive controls are

in formal associations when compared with neighborhoods of a lower economic level." Wendell Bell and Maryanne T. Force, "Urban Neighborhood Types and Participation in Formal Associations," American Sociological Review, XXI, No. 1, (February, 1956), p. 29.

used in the other non-zoning development and control processes.

The Zoning Code requires the planning agency to make a recommendation to the Board of Appeal in some types of appeals, and allows the planning agency to do so in other types.¹¹ In general, recommendations are mandatory when the applicant seeks to build above the permitted height, seeks to use property for business or industrial purposes in a residential district, or seeks to extend a nonconforming use when it is larger than a specified size. Appeals for which recommendations are mandatory were approved 69 percent of the time by the Board of Appeal. Optional appeals were approved 87 percent of the time, which is a significant difference. Table 25.

This finding shows that it is possible to design a summary procedure for less controversial issues. The Board of Appeal by approving optional appeals more consistently than mandatory appeals confirmed the code author's judgment that the issues assigned to the optional appeals procedure were relatively innocuous.

Tables 26 and 27 list the factors which were most effective in causing the Board of Appeal to approve or deny a permit sought in zoning appeals. These tables also show certain natural tendencies of a non-zoning process where officials have discretion and decide building permit applications case by case.

¹¹Zoning Code (1965), sec. 6-2, 7-2.

TABLE 14

ZONING APPEALS APPROVED COMPARED TO TOTAL
BUILDING PERMITS ISSUED

BOSTON 1965-1966

Source of Approval	Dwelling Units Added	Total Cost including Non-residential
Zoning Appeals Approved	2830 (52%)	\$ 79,659,993 (36%)
Building Permits Issued Without Need to Appeal	2628 (48%)	\$138,333,940 (64%)
Total Building Permits Issued	5458 (100%)	\$217,993,993 (100%)

TABLE 15

ZONING APPEALS REPORTED BY RELIEF SOUGHT:
VARIANCE, CODE INTERPRETATION, OR EXCEPTION

BOSTON 1965-1966

	Dollars	Dwelling Units	Number of Appeals
Variances			
Approved	\$46,277,977 (95%)	2355 (83%)	449 (82%)
Denied	2,497,000 (5%)	468 (17%)	100 (18%)
Total	48,774,977 (59%)	2823 (85%)	549 (79%)
Code Interpretations			
Approved	\$ 40,000 (50%)	0	2 (67%)
Denied	40,000 (50%)	0	1 (33%)
Total	80,000 (1%)	0	3 (<1%)
Exceptions			
Approved	\$ 6,731,570 (99%)	108 (94%)	54 (70%)
Denied	35,700 (<1%)	7 (6%)	23 (30%)
Total	6,767,270 (8%)	115 (3%)	77 (11%)
Combination of Variances, Interpretations, Exceptions			
Approved	\$26,610,446 (99%)	367 (100%)	52 (85%)
Denied	89,500 (1%)	0	9 (15%)
Total	26,699,946 (32%)	367 (12%)	61 (9%)
Total Appeals			
	\$82,322,193 (100%)	3305 (100%)	690 (100%)

TABLE 16

ZONING APPEALS REPORTED BY SINGLE BUILDING
OR GROUP OF BUILDINGS

BOSTON 1965-1966

Action	Dollars	Dwelling Units	Number of Appeals
One Building			
Approved	\$50,558,858 (95%)	1365 (76%)	368 (79%)
Denied	2,441,400 (5%)	427 (24%)	97 (21%)
Total	53,000,258 (64%)	1792 (54%)	465 (67%)
Group of Buildings ^a			
Approved	\$29,101,135 (99%)	1465 (97%)	189 (84%)
Denied	220,800 (1%)	48 (3%)	36 (16%)
Total	\$29,321,935 (36%)	1513 (46%)	225 (33%)
Total Appeals			
	\$82,322,193 (100%)	3305 (100%)	690 (100%)

^a"Group of buildings" indicates that applicant seeks permit for more than one contiguous building.

TABLE 17

ZONING APPEALS REPORTED BY NEW CONSTRUCTION,
ALTERATIONS, OR USE VIOLATION

BOSTON 1965-1966

Action	Dollars	Dwelling Units	Number of Appeals
New Construction			
Approved	\$65,136,335 (97%)	2327 (85%)	246 (86%)
Denied	2,229,700 (3%)	413 (15%)	40 (14%)
Total	67,366,035 (81%)	2740 (83%)	286 (41%)
Alterations			
Approved	\$ 9,411,973 (98%)	321 (92%)	164 (86%)
Denied	194,000 (2%)	28 (8%)	26 (14%)
Total	9,605,973 (12%)	349 (10%)	190 (28%)
Use			
Approved	\$ 4,987,985 (96%)	180 (84%)	124 (68%)
Denied	236,500 (4%)	34 (16%)	58 (32%)
Total	5,224,485 (6%)	214 (6%)	182 (26%)
Other			
Approved	\$ 123,700 (99%)	2 (100%)	23 (72%)
Denied	2,000 (1%)	0	9 (28%)
Total	125,700 (1%)	2 (1%)	32 (5%)
Total Appeals			
	\$82,322,193 (100%)	3305 (100%)	690 (100%)

TABLE 18

LOCATION OF ZONING APPEALS IN RELATION TO URBAN
RENEWAL PROJECT AREAS

BOSTON 1965-1966

	Dollars	Dwelling Units	Number of Appeals
Outside of Urban Renewal Areas			
Approved	\$42,944,115 (95%)	1993 (82%)	403 (77%)
Denied	2,506,550 (5%)	439 (18%)	122 (23%)
Total	45,450,665 (55%)	2432 (74%)	526 (76%)
Non Acquisition Portions of Urban Renewal Areas ^a			
Approved	\$19,409,439 (99%)	207 (83%)	70 (86%)
Denied	155,650 (1%)	36 (17%)	10 (12%)
Total	19,565,089 (24%)	243 (7%)	80 (11%)
Disposition Sites Within Urban Renewal Areas ^b			
Approved	\$17,306,439 (100%)	630 (100%)	84 (100%)
Denied	0	0	0
Total	17,306,439 (21%)	630 (19%)	84 (12%)
Total Appeals			
	\$82,322,193 (100%)	3305 (100%)	690 (100%)

^aThese are parcels within urban renewal project areas but not scheduled to be acquired by the redevelopment authority. The urban renewal program seeks to stimulate private rehabilitation of such properties.

^bThese zoning appellants are developing sites being sold to them by the redevelopment authority.

TABLE 19
ZONING APPEALS FOR PUBLIC HOUSING UNITS
BOSTON 1965-1966

Dollars	Dwelling Units	Number of Appeals
\$3,673,226	316	16

Note: All 16 cases were approved. Fourteen of the sixteen cases involve buildings outside of urban renewal areas. There was some opposition at the public hearings to three of the sixteen cases.

TABLE 20

ZONING APPEALS REPORTED BY PLANNING AGENCY RECOMMENDATION
AND BOARD OF APPEAL DECISION

BOSTON 1965-1966

	Dollars	Dwelling Units	Number of Appeals
No Recommendation Made by B.R.A.			
Approved	\$43,253,498 (97%)	1502 (87%)	303 (79%)
Denied	1,051,650 (3%)	222 (13%)	77 (21%)
Total	44,305,148 (54%)	1728 (52%)	380 (55%)
B.R.A. Recommended Approval			
Approval	\$31,506,335 (99%)	652 (99%)	161 (89%)
Denied	125,350 (1%)	5 (1%)	20 (11%)
Total	31,631,685 (38%)	657 (20%)	181 (26%)
B.R.A. Recommended Denial			
Approved	\$ 4,900,160 (77%)	674 (73%)	93 (72%)
Denied	1,485,200 (23%)	246 (27%)	36 (28%)
Total	6,385,360 (8%)	920 (28%)	129 (19%)
Total Appeals			
	\$82,322,193 (100%)	3305 (100%)	690 (100%)

TABLE 21

ZONING APPEALS REPORTED BY EFFECT OF OPPOSITION
 BOSTON 1965-1966

	Dollars	Dwelling Units	Number of Appeals
No Opposition			
Approved	\$64,362,670 (99%)	2096 (98%)	415 (90%)
Denied	385,490 (1%)	58 (2%)	44 (10%)
Total	64,748,160 (79%)	2154 (65%)	459 (66%)
Some Opposition			
Approved	\$12,612,213 (85%)	650 (61%)	130 (60%)
Denied	2,231,710 (15%)	417 (39%)	85 (40%)
Total	14,843,923 (18%)	1067 (32%)	215 (32%)
Presence of Opposition Unknown			
Approved	\$ 2,685,110 (98%)	84 (100%)	12 (75%)
Denied	45,000 (2%)	0	4 (25%)
Total	2,730,110 (3%)	84 (3%)	16 (2%)
Total Appeals			
	\$82,322,193 (100%)	3305 (100%)	690 (100%)

TABLE 22
ZONING APPEALS REPORTED BY BUILDING COST
BOSTON 1965-1966

Cost Range of Appeals	Total Appeals	Approved		Some Opposition		Some Opposition Denied	
		Number	Total Appeals	Number	Total Appeals	Number	Total Wit Opposition
No Cost Reported	158	104	66%	67	42%	35	52%
\$1-- 999	49	44	90%	4	9%	4	100%
1000 -							
2499	34	26	76%	16	47%	6	38%
2500 -							
4999	38	30	79%	8	21%	4	50%
5000 -							
9999	84	64	76%	27	32%	9	33%
10000 -							
24999	142	121	85%	43	30%	13	30%
25000 -							
49999	36	31	86%	11	31%	4	36%
50000 -							
74999	34	32	94%	4	12%	1	25%
75000 -							
199999	54	47	87%	18	33%	6	33%
\$200000 - over	61	58	95%	17	33%	3	17%
Total	690	557	81%	215	31%	85	40%

TABLE 23

EFFECT OF OPPOSITION TO ZONING APPEALS
REPORTED BY ZONING DISTRICT

BOSTON 1965-1966

Zoning District	Total Appeals	Approved		Some Opposition		Some Opposition Denied	
		Number	÷ Total Appeals	Number	÷ Total Appeals	Number	÷ Total with Opposition
S.3	23	18	78%	12	52%	5	42%
S.5	70	48	68%	42	60%	17	40%
R.5	100	69	69%	34	69%	22	65%
R.8	56	41	63%	21	38%	7	33%
H 1	121	107	88%	40	33%	12	30%
H 2	55	55	100%	8	15%	0	0%
H-2-65	6	4	67%	0	0%	0	-
H 3	15	14	93%	1	7%	1	100%
H 4	10	10	100%	1	10%	0	0%
H 5	24	18	75%	11	46%	3	27%
L.5	51	36	71%	17	33%	9	53%
L 1	45	39	87%	10	22%	4	40%
L 2	10	10	100%	2	20%	0	0%
B 1	26	23	88%	5	19%	1	20%
B 2	10	10	100%	0	0%	0	-
B 4	3	2	67%	2	67%	0	0%
B 8	3	3	100%	1	33%	0	0%
B 10	0	0	0%	0	0%	0	-
M 1	35	24	68%	6	17%	3	50%
M 2	11	11	100%	0	0%	0	-
M 4	0	0	0%	0	0%	0	-
M 8	1	1	100%	0	0%	0	-
I 2	8	7	86%	2	25%	1	50%
W 2	7	7	100%	0	0%	0	-
All Districts	690	557	81%	215	31%	85	40%

TABLE 24
ZONING APPEALS APPROVED AND DENIED
BOSTON 1965-1966

	Dollars	Dwelling Units	Number of Appeals
Approved ^a	\$79,659,993 (97%)	2830 (86%)	557 (81%)
Denied	2,662,200 (3%)	475 (14%)	133 (19%)
Total Appeals	\$82,322,193 (100%)	3305 (100%)	690 (100%)

^aThe Board of Appeal may attach to its approval conditions limiting the intended construction or use of premises. This occurred in 284 appeals or 51% of all appeals.

TABLE 25

ZONING APPEALS REPORTED BY OPTIONAL OR MANDATORY PLANNING
AGENCY RECOMMENDATION

TO BOARD OF APPEAL

BOSTON 1965-1966

	Dollars	Dwelling Units	Number of Appeals
Optional Cases			
Approved	\$43,646,557 (98%)	1731 (95%)	395 (87%)
Denied	669,926 (2%)	97 (5%)	59 (13%)
Total	<u>44,316,483 (54%)</u>	<u>1828 (55%)</u>	<u>454 (66%)</u>
Mandatory Cases			
Approved	\$36,013,436 (95%)	1099 (74%)	162 (69%)
Denied	1,992,274 (5%)	378 (26%)	74 (31%)
Total	<u>\$38,005,710 (46%)</u>	<u>1477 (45%)</u>	<u>236 (34%)</u>
Total Appeals			
	<u>\$82,322,193 (100%)</u>	<u>3305 (100%)</u>	<u>690 (100%)</u>

Note: Of 236 appeals for which it was mandatory that the planning agency make a recommendation, the planning agency failed to make a recommendation for 125 appeals or 53%.

TABLE 26

FACTORS PRESENT IN ZONING APPEALS APPROVED BY THE BOARD OF APPEAL
(Overall Per Cent of Appeals Approved is 81%)

BOSTON 1965-1966

Factor	% Appeals Approved Having This Factor
Urban Renewal Disposition Site (Applicant is developer of site being sold by the Boston Redevelopment Authority)	100%
Applicant is Boston Housing Authority seeking permits for public housing units	100%
No one appeared in opposition to the Appeal at the public hearing	90%
The Boston Redevelopment Authority as Planning Agency recommended approval of the Appeal	89%
The site is in one of the four residential zoning districts (R.8, H 1, H 2, H 3) where average family income of residents was low in 1960 (\$5800 or less)	.88%
The applicant seeks permission to exceed some maximum building dimension, rather than to use land or a building in a manner not permitted in that zoning district	86%
The estimated cost of construction is more than \$9999	88%

TABLE 27

FACTORS PRESENT IN ZONING APPEALS HAVING A WORSE
THAN AVERAGE RECORD OF APPROVAL
(Overall Per Cent of Appeals Approved is 81%)

BOSTON 1965-1966

Factor	% Appeals Approved Having This Factor
There is opposition to the Appeal at the Public Hearing	60%
The applicant seeks permission to use land or a building in a manner not permitted in that zoning district	68%
The Boston Redevelopment Authority as Planning Agency recommends denial of the Appeal	72%
The site is in one of the six residential Zoning Districts (S.3, S.5, H-2-65, H 4, H 5) where average Family Income of residents was high in 1960 (\$6400 or more)	72%
The Estimated Cost of Construction is less than \$10000, or no cost is reported	74%

CHAPTER VII

URBAN RENEWAL AS A SOURCE OF DECISION METHODS: THE WASHINGTON PARK EXPERIENCE

This chapter is a case study of urban renewal, Boston's major non-zoning method for altering the city's stock of buildings and uses of space. Findings are suggested at the conclusion of the chapter.¹

The generality of this case study has these bases: (1) The Washington Park area is similar to many near the center of Boston and other large American cities in that it contains a majority of low income residents, and mostly old housing. (2) The treatment given this project area, that is, partial clearance, rehabilitation and construction of new public, institutional and private facilities needed to strengthen the community as a residential area is typical of emerging practices in Boston and elsewhere. (3) The design review process recommended by the Department of Housing and Urban

¹Many facts in this chapter about B.R.A. objectives and administration were obtained by interviews with B.R.A. staff members Stephen Diamond, Charles Hilgenhurst, Deborah Lamb, Tad Tercyak and Samuel Thompson. See also: Samuel Thompson, "Citizen Participation in Urban Renewal," (Unpublished Ph.D. Thesis in City and Regional Planning, Harvard University, 1966).

Development² is deliberately practiced by the Washington Park staff, and is being used in other Boston projects which were not as far along as this at the time of writing, and for projects in other cities.

The project area is 500 acres in size, occupying hilly terrain, only two miles from the first Boston settlement of 1630. There has been about three hundred years of use and abandonment of the area by one suburb-bound class after another. Before 1850 this was a rural retreat for the wealthy Yankees. After streetcars were extended, middle-class Irish overran this portion of Roxbury and made it a suburb.³ By this time its formless, vaguely curving street pattern was set. Then came a Jewish wave, then blacks. In 1950 the area was 20 percent black and 80 percent white. Incoming blacks reversed this proportion by 1960.

There are structures remaining from each of these periods. On Warren Street, the south boundary of the project area, there is a statue of General Joseph Warren, a Revolutionary war hero who lived nearby. There are scattered pre-Civil War mansions and Gothic Revival houses, which have been engulfed by the late nineteenth century suburban frame houses and "triple deckers" of streetcar suburb days. On

²U.S. Housing and Home Finance Agency, Urban Renewal Administration, Design Review in Urban Renewal, Technical Guide 15, (Washington: U.S. Government Printing Office, 1965). U.S. Housing and Home Finance Agency, Urban Renewal Administration, Design Objectives in Urban Renewal Documents, Technical Guide 16, (Washington: U.S. Government Printing Office, 1965).

³Sam B. Warner, Jr., Streetcar Suburbs: The Process of Growth in Boston 1870-1900, (Cambridge: Harvard University Press & MIT Press, 1962).

hilltops are Catholic church-school-convent citadels built during the Irish occupation. There are bulky brick apartment buildings, shops along the major streets, temples, and institutions left over from the Jewish era of the 1920's.

About one-third of the buildings and lots in the project area are being acquired for clearance, land assembly, and resale to public and private developers. The Boston Redevelopment Authority intends by means of strong ideas and controls over these redevelopment sites to give neighborhood scale architectural character to the present confusion of hilly terrain, vaguely curving streets, superimposed layers of different periods of historic building types, and institutional architecture expressive of various immigrant waves.

The Capital Web is a wide street extended between centers of activity.⁴ Along the web is open space, schools, institutions, and businesses for the common use of neighborhoods on both sides. The Capital Web idea was brought to the Washington Park project by David Crane,⁵ city planner, then on leave from the University of Pennsylvania. Many of the redevelopment sites are along the two major radial streets at the outside edges of the project. These and a new cross-town boulevard through the project area are emerging as a new Capital Web serving and invigorating the internal residential streets, and giving architectural scale to the entire area.

⁴ 1965/1975 General Plan, p. 23.

⁵ David A. Crane, "The Public Art of City Building," in "Urban Revival," ed. Mitchell, Annals of American Academy of Political and Social Science, CCCLII, (March, 1964), 84.

A street cross section gives motorists clear directions and a satisfying sense of enclosure if buildings rise abruptly on both sides, forming a channel. City streets can at the same time operate as a collector of activity. Alongside a street there can be doors that open to apartments, shops, offices, and meeting rooms. There can be windows that look onto busy sidewalks and onto outdoor gathering places. Both the street-between-walls idea and street-as-collector-of activity idea are being applied to the design and the review of new construction along the project's Capital Web.

In Warren Gardens, an apartment development, architects Ashley-Meyer and Hugh Stubbins caught the B.R.A. design review section's fever for erecting wall-like buildings along streets. For the Warren Street edge of their project they have designed an apartment cross-section having three stories on the street side and two stories on the interior. The Academy Homes development of 517 dwelling units retained major trees and has interior courtyards and play areas.⁶ Yet the most visible facade is a four-story windowed wall hard against Columbus Avenue. There are shops at ground level.

The project area came out of its 19th century rapid growth process with a rather diffused and weak arrangement of spaces for social and service purposes. Its churches, schools, and shops--its gathering places--were along the transit corridors leading to the real gathering place, downtown Boston. The redevelopment plan proposes to correct this by opening a crosstown street through the area

⁶Joan E. Goody, New Architecture in Boston, (Cambridge: MIT Press, 1965), p. 52.

which will be planned to allow large and modern community facilities, shops, and rental housing. The new Boulevard will intersect with Humboldt Avenue which is already a "social spine" having bus stops and well-worn sidewalks. Along this T are concentrated two new shopping areas, a park being enlarged, a skating rink, a new park, the new YMCA, five housing developments including a tower of housing for the elderly, a new public school, and some prominent sites originally intended for the relocation of churches. See figures 20 and 21. The B.R.A., in coordinating over a dozen separate development parcels along this Boulevard, seeks powerful relations between all the elements so this new gathering place can compete for the attention of residents with the magnet of downtown Boston just ten minutes away. The aging streetcar suburb may become a community in its own right.⁷

Building masses on opposite sides of Washington Park Boulevard at Warren Street act as a gateway. The shopping center is one gate post. The new YMCA across the street is the other. The gateway of building masses gives ceremonial meaning to one's entering and leaving this popular concentration of parkland, wide sidewalks, institutions, shopping facilities and rental housing. On the low side of the Boulevard there is a new garden apartment development composed of small buildings. Urban designers feared that these small buildings would look out of scale next to the wide Washington Park Boulevard. To

⁷John Dean has argued that heterogeneous groups or classes sharing a neighborhood will not interact unless there are community spaces and places such as these where this can occur. John P. Dean, "Housing Design and Family Values," Land Economics, XXIX (May, 1953), 128.

Fig. 19.--Washington Park Boulevard area before redevelopment.



Concentrations of obsolete and dangerous structures.
Lack of modern retail outlets.
Inadequate amount of indoor and outdoor community gathering places.
Lack of offstreet parking.
Few pedestrian realms.
No variety in size of enclosed and outdoor spaces.

Fig. 20.--Washington Park Boulevard area after redevelopment.



1. New relocation housing for families of low and moderate income.
2. New retail outlets.
3. Enlarged park with indoor recreation space.
4. New elementary school.
5. New pedestrian circuit.
6. New church or community buildings.
7. New park.
8. High rise public housing for elderly.
9. New YMCA.

overcome this, pairs of buildings were placed close together with their end walls normal to the Boulevard, and a parking bay was inserted between each pair of buildings. This pattern of a pair of building end walls, then a parking bay, then a pair of building end walls, was repeated several times along the Boulevard. As a result the garden apartment development appears larger than it is, and more in scale with the wide Boulevard.

Generally, building masses and walkways rather than parking lots and curb cuts are being located along the two main streets. Automobile access to buildings is from side streets. Pedestrian connections between separate redevelopment parcels have been given careful attention. For example, a walkway through the interior of a garden apartment building group carries the pedestrian to a side entrance of the shopping center. Washington Park Boulevard will be improved with wide sidewalks on both sides. A tree planting plan calls for a double row on the north side adjacent to new buildings, with informal masses of trees on the south side to soften views of the 19th century frame houses exposed by redevelopment.

The kinds of things being built in the project area, and their visual impact, do not echo a consistent theme. Neither a Baron Haussman nor a Jane Jacobs can be detected behind the scene in the wings. Many participants motivated by four separate value systems are imposing an almost random sorting process onto the flow of redevelopment decisions. The four dominant value systems are these:

Middle Class.--a quiet integrated inner suburb for moderately prosperous families is a major value affecting decisions. The image is tree-lined streets, well maintained old homes with occasional contemporary home or garden apartment group, well served by new neighborhood schools, parks, and shopping centers.

Lower Class.--a haven for the disadvantaged is a second value affecting decisions. The image is scattered sites of new public housing, low cost private housing, health and welfare buildings, institutions serving distressed social groups or types. There would be shops, small businesses, lunch counters, clubs, bowling alleys, as needed for a strong outdoor community life, rather than family or cosmopolitan life.

Urban Design.--a demonstration of contemporary urban design and architecture is a value asserted through the architectural review procedures. Specifically, urban design in Washington Park takes such forms as the Capital Web, buildings arranged to be a "hard edge" to a street, and towers located at activity foci in order to produce a "legible skyline."

Momentum.--an interest in the rapid completion of redevelopment, to fill the cleared sites and restore wholeness to the community. Proponents of this value are indifferent to form (middle class suburb, lower class haven, urban design) but care about process. They want new building plans exposed to their ultimate users for acceptance, in order to get on with the next building proposal. It is a coordinating value asserted to prevent a confrontation between conflicting values from

stopping redevelopment altogether.

The design review efforts are bringing some benefits to the area of absolute value, to all classes, whether they invite the benefits or not. The design review section urges developers to commission great architecture. The new YMCA building is raw concrete, with few windows, as if intended for storage of high explosives. An outside wall near the entrance is an abstract concrete mural commissioned because one percent of building cost must go towards fine art. This building by the Architects Collaborative, "name" designers, is on Boston's modern architecture tour route, adding prestige to the Roxbury community.⁸

Perhaps the cost of low and medium income redevelopment housing has risen because of the rigorous design review function of the B.R.A. Yet these design review decisions are being made with price tags attached, so that each architectural demand can be set off against its price before reaching a decision. As a rule of thumb, an alternate arrangement or feature considered desirable from an architectural or urban design standpoint will be chosen only if it adds no more than five percent to monthly rent.

Project management and neighborhood middle class leadership have carried on a five year running debate over the amount of public housing to be built in the project area. In two cases, public housing proposed to the residents was in the form of high-rise towers at major intersections. In another case low rise housing was proposed

⁸Goody, p. 50.

in one of the area's most visible locations. Such public housing forms and locations only antagonize middle class leaders, who react against such proposals at public meetings, and cause the public housing proposals to be withdrawn, at the expense of lower class interests. These are instances where urban design, which is doing much to give visual unity and power to Washington Park redevelopment, has temporarily set back vital redevelopment objectives. Project management and design review architects are now finding less visible means of introducing public housing, such as random purchases and rehabilitation of "triple deckers."

For every 500 families in rehabilitation areas there is a committee of residents who meet to discuss neighborhood renewal. To the B.R.A. designers these meetings are an opportunity to think through detailed designs where there will be a mixture of new and old buildings. Small sites made available to the B.R.A. are evaluated for reuse through meetings with residents. Demand for new rental housing versus sale housing can be probed, and the "micro-politics" of acceptance of scattered public housing, tot-lots, or street closings can be tested. Home owners who undertake rehabilitation have quite often been introduced to urban renewal possibilities at such neighborhood meetings.

Horatio Harris Park has a wall of buildings forming a space, yet has dramatic topography and rock outcrops. Neighborhood residents were split over whether there should be a play apparatus. The design review architects were leery about apparatus because of the strong visual form of the park. In their program to the landscape architect

they suggested scattered play sculpture, which has been built and is handsome. See figure 21, page 177.

The project plan as it is unfolding over time is open ended, even expedient. It can absorb shocks of rejection by property owners gathering in subarea meetings, or changes in the land market for redevelopment sites. Sites were set aside according to the urban renewal plan for small businesses and churches cleared by the bulldozer. In fact, little such relocation has occurred, and the sites are being advertised for other purposes. About two hundred structures on scattered locations which were supposed to be rehabilitated are falling into disrepair. These are being acquired by the Boston Redevelopment Authority because their presence is a threat to public safety and the rehabilitation program, though an additional Federal grant was necessary to acquire them. During urban renewal planning, leaders of two churches expressed an intention to stay and rehabilitate. At their own request, their properties are now being acquired for redevelopment. In short, the project managers have sacrificed predictability and a simple plan, in order to meet new situations as they arise.

The momentum strategy is disappointing both to those with a clear suburban image in mind, and those who want a haven for the disadvantaged. But unexpected social benefits are generated by a program which ranks wide participation above clear direction. For example, from the black community has come church-sponsored housing projects, new leaders, new professional reputations in architecture and law.

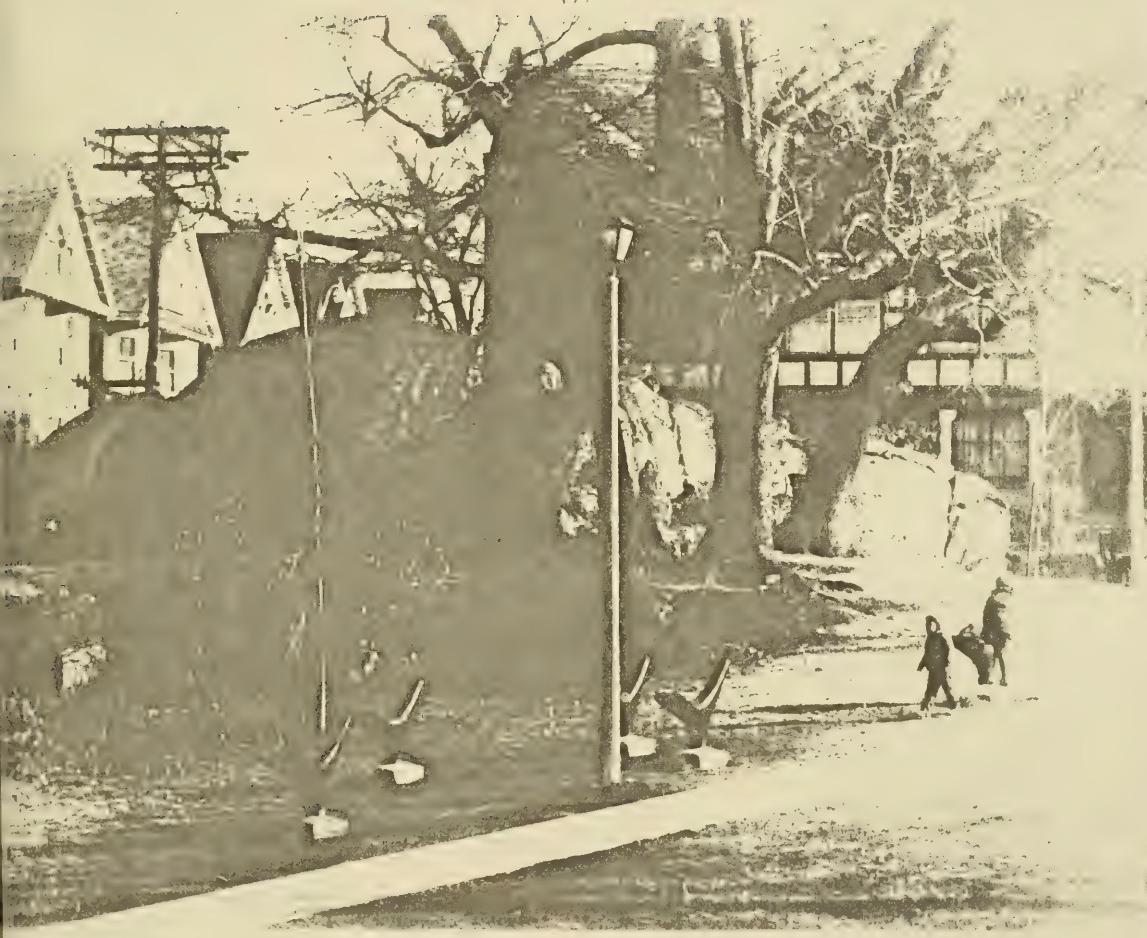


Fig. 21. --Horatio Harris Park showing urban renewal improvements.

An inter-denominational social club has formed and is looking for a building site. Neighborhood organizations are flourishing. The bulk of housing in the project is not being trickled down to poorer families, nor is it particularly accomplishing integration. But it is helping a black reference group demonstrate success in stable family building, home ownership, and the separation of home life from occupation. The redevelopment project is bringing many district scale benefits to lower income groups living outside the project area in the form of the YMCA, Boys' Club, civic center, recreation buildings and spaces, and the new shopping facilities. Managers of many social programs are using the furious redevelopment activity in Washington Park as a shelter or vehicle for their less tangible programs.

Means by which predetermined objectives of the urban renewal plan are translated into real buildings and surfaces, and by which new objectives are discovered are the urban renewal plan control documents, and the design review process. Control documents include the Urban Renewal Plan, Illustrative Site Plan, other design studies, and the kit furnished each developer. Recent Boston urban renewal plans contain design goals which give the developer's architect specific directions. For example, the Urban Renewal Plan for the Charleston Project⁹ establishes these objectives for a disposition parcel: "This major site is intended to function as a compact shopping center, to include characteristically local services such

⁹Boston Redevelopment Authority, Urban Renewal Plan, Charlestown Urban Renewal Area; (Boston: Boston Redevelopment Authority, February 1965).

as entertainment and offices, and to visually enhance the major entrance into Charlestown occurring at the southerly and easterly sides." But the Washington Park Plan¹⁰ speaks more generally, urging for example, the goal "to strengthen the physical pattern of neighborhood activities; to provide a more wholesome framework of environmental conditions better suited to meet the requirements of contemporary living."

The Illustrative Site Plan has gone through three stages in residential projects in Boston: a symbolic phase, where building forms merely represent various uses of land, but more evocatively than letter symbols; a realistic phase, where developers' architects are expected to locate buildings as shown on the Illustrative Site Plan; and a diagrammatic phase, where essential building massing and circulation concepts, but not building dimensions, are conveyed. The Washington Park Project Illustrative Site Plan represents the earlier symbolic phase and therefore gives less guidance to developers than do the diagrammatic plans available in later urban renewal projects.

Additional design studies are continuously made by the B.R.A. Urban Design Department during project execution. In Washington Park sequential studies along major streets tell how new building masses can create meaningful open spaces and constrictions and open spaces. See figure 22, page 180. Pedestrian circulation studies are also made. Some products are useful in preparing developers' kits. The kit contains more detailed, custom-written, building and land use requirements than does the urban renewal plan. The kit has a

¹⁰B.R.A., Washington Park Plan (1963).

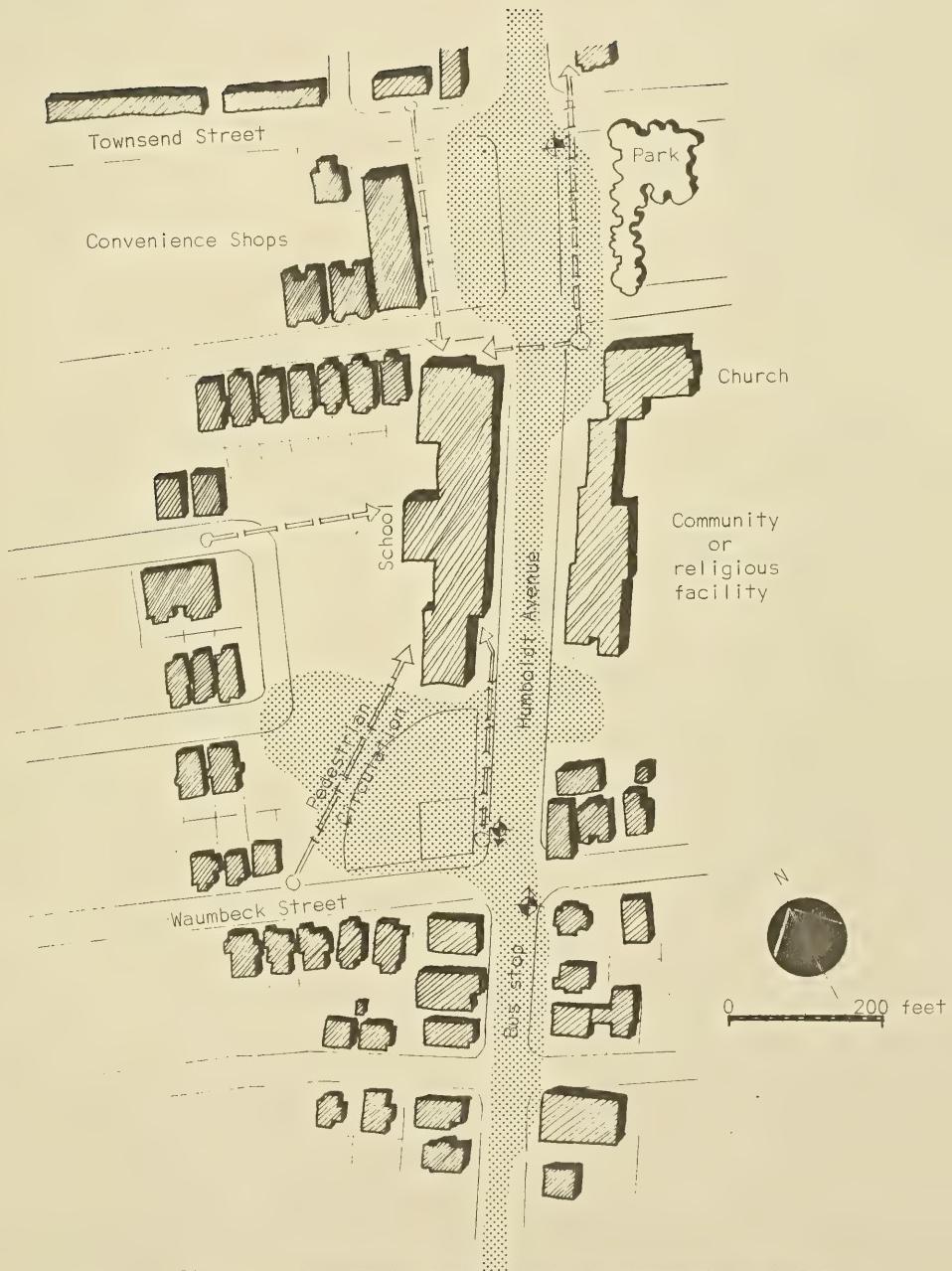


Fig. 22.--A study made by B.R.A. staff for determining building massing along the main pedestrian avenue in the Washington Park urban renewal project area.

diagram showing circulation and building massing requirements, and contains engineering data regarding utilities, foundations, grades.

The developer's architect submits building plans in four stages.¹¹ In the case of housing, the first stage submissions are called "conceptual plans," require a showing of "general relationships of buildings, open spaces and roads, walks and parking areas." Building plans at this stage must be "sufficient to indicate general architectural character, structural system, and materials proposed." There must be a written statement of number of dwelling units, type of units, community facilities to be provided, etc. The second stage requires the same material, but presumably in more advanced form, plus plans and elevations of all dwelling units. The third stage requires work drawings, and an outline of specifications. Final stage material has specifications, and is ready for bid and construction, after B.R.A. approval. The architect must have an approval letter before proceeding with the next submission stage. According to the rules of the game, the design review section stands by what it has approved in a prior stage, and only concentrates on refinements, new items, or changes proposed by the developer's architect.

The next few paragraphs are a case study of the exchanges that occurred between the B.R.A. and one housing developer.¹² The

¹¹ Boston Redevelopment Authority, The Design Review Process and Redeveloper's Architectural Submissions for Housing Parcels, (Boston: Boston Redevelopment Authority, June, 1967).

¹² Quoted material is from the B.R.A.'s file of exchanges with a particular developer's architect over one housing development. I have substituted X and Y for the true street names to avoid identifying

B.R.A.-prepared "kit" for the site contained the following information: site area in square feet; permitted uses (housing only, in this case); maximum building height, (40 feet); floor area ratio (.9); net density (35 dwellings to the acre); a requirement that the site plan conform to the Zoning Code yard requirements, without reciting what these are. Nearby Community facilities are listed and the nearest park, bus stop. The architect is exhorted to make "every effort" to retain existing trees. There are statements on open space, indicating that private and public spaces should express their intended use, and to be "integral parts of the total design." Parking "should be related as closely as possible to the individual units served."

The instant case is low and moderate income housing, built by non-profit or limited profit developers. "It is expected that a substantial dollar commitment will be allotted for site development and landscaping." Fire and emergency access must be provided, but can be designed for emergency use and service vehicle use only. There must be convenient moving van access to all units. Fencing is required around yards of row units. There must be screens dividing a balcony serving more than one unit. "In the design of grouping of buildings, great care must be taken to avoid an institutional character . . . , and to emphasize the identity of the individual unit. Devices such as changes in vertical plane and roof line should be used."

the actual housing development.

There is a specific schedule of apartment room sizes and rent levels which the development "should approach as nearly as possible."

The developer is urged to give "due consideration to vehicular traffic on adjacent streets," "Very heavy" traffic can be expected on one of the adjacent streets, says the package. The developer is further told that another of the adjacent streets may someday be closed, becoming a stem serving the project and a few other dwellings, rather than be a collector street for the several hundred dwellings.

The developer's architect, armed with such a "kit," prepared his first submission.

He received back from the Design Review officer a five page written review. The review points out that the submission proposes 10 percent fewer three-and-four-bedroom units than the program "package" called for, but this is approved because of hardship. The site plan violates the yard requirements of zoning. The developer is asked in his next submission to list what zoning variances will be required before building permits can be granted. The developer is reminded that he should save the trees. Parking which requires backing into a peripheral street is scored as improper layout. The developer is told that nine feet is adequate width for a parking space.

The review notes that the density of the submission is nineteen dwellings to the acre rather than thirty-five, (but adds that this probably all that can be expected with two story row-houses). This implies that the site planner is supposed to maximize his "yield" of dwelling units, rather than minimize the yield, as is the typical of dwelling units, rather than minimize the yield, as is the typical.

position taken by a public agency reviewing a suburban site plan.

Large cul-de-sac opens the site too much at the corner of [X and Y] streets. All of the required parking could be provided on the through street. Disorganized and weak edge formed on [X] street with many residual spaces. Some units organized around entry but many left isolated . . . Major path system should show a connection to the most important pedestrian access point on the site.

Consistent saw tooth edge produced on [X] street but less consistent attitude of dwelling entrances to entry spaces is shown. In conclusion, we feel that none of the site plans presented are completely adequate, and we have therefore developed a plan which illustrates some of the ideas we feel are appropriate for this site. [In our scheme] each dwelling unit is related to one of a variety of exterior spaces. [X] street edge of the site is formed strongly by two pairs of building end walls reflecting the rhythm established [by the neighboring housing development] and protecting the privacy of many of the dwelling units. Another preliminary submission of the site plan will be required.

The review goes to the interior of the proposed dwelling units. 'Main entrance to the units is directly into the living room with no foyer or shielding of nearby coat closet. An improvement could be made in this area. Storage space is very limited, especially in the four bedroom unit where the extra space now provided in two and three bedroom units for a tenant's washer is omitted.'

All plans could be greatly improved by the construction of basements . . . Other B.R.A. 221(d)(3) frame row house units have basements for most units. . . . The attempt to produce a variation in the roofline is welcome but further refinement of this form is necessary. . . . The horizontal feeling produced on some of the elevations by the paired dormers and bands of siding might be successfully replaced by an emphasis on the individual dwelling units. . . . The developer should determine the minimum rents that can be achieved with the present increased money cost and construction cost and then should estimate the increase due to various [demands called for in this letter]. It is necessary to have a specific price tag for each item under discussion for an informed decision on its value. Further study is required on the unit plans and elevations. . . .

Findings from this exchange are made at the end of the chapter.

The price of land in B.R.A. projects is fixed; developers are chosen on the basis of their competence and their architect's. When only one developer is interested in a disposition site, B.R.A. refrains from suggesting architects' names. But should the developer suggest an

architect not considered well-qualified by B.R.A., he will be asked to find another. A competition based purely on architectural design was used to choose an architect-developer team for the Washington Park Shopping Center. In subsequent design reviews the plans of the winning architect took on a "warehouse look," and the site was sold to a different developer-architect team. The B.R.A. retains ownership of the land until design approval has been made on the fourth submission. This practice guarantees B.R.A. great influence over design coordination.

The redevelopment authority staff's judgment of plans submitted by developers' architects frequently gets additional support from the Design Advisory Committee. Architects Nelson Aldrich, Lawrence Anderson, Pietro Belluschi, Jose Luis Sert, and Hugh Stubbins, Committee members, meet monthly and give opinions on designs brought before them.

Here are suggested findings of this project case study:

- I. Urban renewal delivers benefits to users of the environment. The project area has hilly terrain, vaguely curving streets, superimposed layers of different periods of historic building types, and institutional architecture expressive of various immigrant waves. One objective of urban renewal here is to organize the building forms of the sixty or more redevelopment sites within the project to create a visual character for the area, rather than contribute to the present confusion. Visual character is being added by major streets having new activities and wall-like building forms concentrated along them. New indoor and outdoor gathering places are being concentrated, to create a neighborhood center or focus now lacking in this "streetcar suburb." Facilities are being

built which are needed by residents. This includes a courthouse, a neighborhood "city hall," schools, open space, institutions, housing available only to middle and low income families and those displaced by redevelopment, retail outlets.

2. The superiority of urban renewal over zoning treatment for this area is revealed in several ways. The Zoning Code and maps which took effect in 1965 called for gradual, random replacement of existing buildings in this area by new buildings having more space around them. Calculations made in Chapter III¹³ showed that over a century might be needed for such a complete change. Recent experience in the area¹⁴ has shown that such ideal zoning has hampered owners of present dwellings from rehabilitating them. Of course zoning could not produce the specific new buildings' uses needed by residents, such as a large shopping center. The urban renewal agency assembled land and offered to sell it only to one who would develop such a center. The urban renewal design review staff massed new buildings to help show users of the area how its parts are intended to function. Large buildings acting as gateposts to the new street where social activities are clustered exemplify this. Zoning Code officials cannot accomplish such conscious building massing, nor can they employ an architectural competition or a distinguished Design Advisory Committee as a means of influencing architectural quality.

¹³P. 58

¹⁴Pp. 60-61, 63-65.

3. The urban renewal procedure allows ideas to enter the decision forum from many sources: from neighborhood organizations, the site developers and their architects, the professional staff of the urban renewal agency. Most spokesmen submit user objectives. Residential property owners who participate are generally residents of the area. Developers of disposition sites are awarded property by demonstrating the benefits they will bestow on future users of the site and its environs.
4. Quantitative, qualitative, anticipatory and responsive controls are all used in the design review process. Examples of each type or control are seen in the quoted negotiations with one housing developer. Proposed and counterproposed words, numbers and drawings are exchanged by the private and public agents, until a mutually satisfactory arrangement of buildings and uses of space has been determined.
5. The case study demonstrates that development can proceed despite unresolved conflicts between interest groups over objectives. These conflicts can be settled almost building by building as the area is rebuilt. Project management encourages various interest groups to review specific plans and make a decision, so that construction can move ahead. Unanticipated benefits to many groups result from such a momentum strategy which pushes on without regard to end-state stereotypes.
6. The case study shows there are important planning and development roles for private developers and professionals when overall project management is in public hands.

CHAPTER VIII

TOWARDS EXPLAINING AND COORDINATING A FIELD OF DEVELOPMENT AND CONTROL PROGRAMS

This Chapter has findings of Boston experience with zoning and related development programs and controls from about 1950 to 1967, with emphasis on 1965-1967, and attempts to explain the proliferation of programs and lack of clarity which now characterize this particular arena of urban activity, and proposes rules for coordination of those activities.

The present Boston zoning law which took effect at the beginning of 1965 was conceived in 1950-1954, at a time when almost all construction and changes of use of space in the City were controlled by the Boston zoning law, and there was little public development.¹ The Boston Housing Authority was slowing down in construction of housing units, and there was little construction being undertaken by the Boston School Committee and City of Boston. Between 1954 and 1967² the Boston Housing Authority began construction again, the Boston Redevelopment Authority was formed and became a powerful force

¹See Tables 6 and 7, pp. 97-98.

²See Tables 7 and 8, pp. 98-99.

for change,³ an urban redevelopment corporation law was adopted, and several large projects were undertaken by corporations⁴ formed under this law. All of the above programs experienced conflicts with zoning, which have lately been minimized by various exemptions giving them preferential zoning treatment compared to private development.⁵ All school and municipal construction has been placed under control of one agency,⁶ and this agency has been granted complete exemption from zoning by the legislature.

The City Council could consolidate several of the development agencies, under 1966 Home Rule amendments to the Massachusetts Constitution,⁷ but will probably not do so. Each agency has its own objectives, its own style of development, its own staff and officials who would resist consolidation. A private urban redevelopment corporation could not be consolidated with a public agency. It is likely that more public agencies will be formed as the needs arise. So it is necessary to find ways of coordinating these various local development agencies, and of making their behavior more predictable to residents and to one another.

Zoning has failed to accomplish the goals established for it by planners and officials in 1950-1954. Zoning theory requires that

³Enabling act cited p. 91.

⁴Table 15, p. 152.

⁵Discussed in Chapter V.

⁶Public Facilities Department, whose enabling act is cited on p.115 .

⁷Cited p. 220.

all development public and private be subject to the same controls;⁸ exemptions granted public agencies and urban redevelopment corporations constitute a failure of zoning. Much privately sponsored construction has evaded zoning control through permits granted by the Board of Appeal to sponsors arguing that zoning compliance would be a hardship.⁹ Zoning was supposed to reinforce the emergence of a cone-shaped city skyline made of new buildings which decrease in size (density of floor area) with distance from the Hub, but exceptions to this gradient have become the rule.¹⁰

By prohibiting the construction of apartments in outer residential districts the new Zoning Code obstructs a contemporary policy of integration of income classes, and is an obstacle to the development of public housing for the elderly in pleasant neighborhoods.¹¹ The new Zoning Code has inadequate procedures to accommodate a mixture of dwelling types or a mixture of commercial with residential uses. Such mixtures are being built in Boston, but with zoning difficulties.¹² Amendments to the Zoning Code permit commercial uses within public housing and urban renewal residential disposition sites, but this exception has not been extended to most types of privately sponsored

⁸P.11.

⁹P.141 .

¹⁰Pp. 47-78.

¹¹Pp. 80-88.

¹²Two examples of mixed uses described elsewhere in this thesis are Castle Square, p. 67 and Academy Homes, p. 168.

housing.

That only 68 percent of all appeals seeking change in use were approved, compared to 86¹³ percent approval where new construction or alteration was proposed, indicates that the Board of Appeal and opponents of change who appear at public hearings support the use provisions of the Zoning Code more strongly than they support the dimensional requirements. In that sense the use requirements have been more successful.

The Waterfront Industrial district¹⁴ has been accepted, judged by its having generated only two zoning appeals in two years. This district reserves certain waterfront sites for waterfront types of industry. The Zoning Commission staff has discussed creating a similar district for commercial and recreation uses associated with water.

There is no longer a consensus as to what form Boston buildings should take. The many exceptions which have been erected to the cone-shaped city skyline do not add up to a new synthesis that could support a city-wide building control system. The variances granted from the Zoning Code indicate that zoning objectives are widely rejected, yet the considerable amount¹⁵ of public opposition to variance applicants at hearings can be interpreted as zoning support. In urban renewal areas there are disputes over whether redevelopment should produce middle class neighborhoods in the suburban image, or become havens

¹³See Table 25, p. 162.

¹⁴Zoning Code (1965), secs. 3-1, 8-7.

¹⁵See Table 21, p. 158.

for the disadvantaged.¹⁶ Fortunately the urban renewal process can produce extensive change in a physically obsolete neighborhood even though no one knows beforehand how the conflicts over end results will be resolved.

There is most agreement over objectives within the historic districts. The historic and architectural consistency of buildings within each district is a widely respected value among historic district commission members and residents of these districts. Administration of controls within these districts is hampered because of overlapping jurisdictions with zoning.¹⁷ To get a building permit in such a district an applicant needs approval from two separate agencies, operating under laws having conflicting objectives. It is likely that more historic districts will be formed within other rowhouse neighborhoods of Boston, such as South End, Charlestown, and North End.

The public hearing before officials having power to issue or refuse to issue building permits has been a feature of development control programs in Boston recently. The historic districts, urban redevelopment corporations administration and the extensive Board of Appeal zoning case load are examples. Frequent public meetings and hearings have also accompanied urban renewal construction, though there is no separate public hearing or meeting held to review each proposed urban renewal building group.

¹⁶P. 173.

¹⁷Pp. 48-53.

Professional environmental designers such as architects, urban designers, landscape architects and urban planners now play major roles in the design and review of proposed changes in the building stock. In 1964 and 1965 less than 2 1/2 percent of all new buildings accounted for about 75 percent of construction cost of new buildings and alterations for these years.¹⁸ These most important 150-200 largest buildings receiving permits each year are all designed by architects and other design professionals. Various professional experts often represent applicants and opponents before the Board of Appeal, and that agency receives recommendations prepared by the B.R.A. professional staff.¹⁹ The Beacon Hill and Back Bay Commission members rely on the opinions of their architect-member or architect advisor in reviewing submissions, the more important of which are prepared and presented by private architects. Proposals for urban redevelopment corporations, within urban renewal disposition sites and on public housing sites and the work sponsored by the Public Facilities Department is designed and reviewed by architects and other design professionals.

The increased influence of professional environmental designers, who are trained to design for the needs of users of buildings and streets, is one of many trends away from owner objectives and towards user objectives in the urban development of Boston.

¹⁸Table 28, p. 202.

¹⁹Pp. 145-146.

Theory of the 1950's called for a regulated competition between property owners to produce a renewed city.²⁰ By contrast, the non-zoning processes each create or strengthen some specific user objective: to retain outstanding historic portions of the city, to remove blight, to house low-income families, to provide public facilities. More construction is now sponsored by public agencies and limited profit and non-profit corporations or institutions than by owners or developers motivated by profit. Since 1960 there has been a net annual increase in dwelling units in the city, in part because of low and middle income housing sponsored by non-profit institutions, aided by public subsidy.²¹

The success of residents of several neighborhoods in causing the abandonment of official redevelopment plans for these areas is another demonstration of user power. The change in policy from total to partial clearance in redevelopment areas to minimize displacement of low income families, is another user victory.

Edward J. Logue, Redevelopment Administrator during the period studied, values user objectives highly:

²⁰Pp. 37-43. Property owners can get zoning protection by the substitution theory. Their properties stand for them. This Thesis has suggested instead that it is the users of property who should be protected. The Supreme Court in 1961 made it clear that the Equal Protection clause protects persons, not property. "The Equal Protection Clause relate to equality between persons as such, rather than between areas. . . . Territorial uniformity is not a constitutional prerequisite." McGowan et al. v. Maryland, 366 U.S. 420, 427, 81 S. Ct. 1101 (1961).

²¹Figure 14, p. 109, and Boston Redevelopment Authority, Housing in Boston, (Boston: Boston Redevelopment Authority, 1967), pp. 66-67. Cited hereafter as Housing in Boston, 1967.

QUESTION: I'd like to direct this to Mr. Logue. I think one lesson for us is that all humans, and particularly Americans, have a need to manipulate their environment. To put it another way, school children learn to cheat. How have you dealt with this problem of giving people in renewal areas, if not the city as a whole, a real opportunity to get involved, to participate?

MR. LOGUE: Well, I started this process eleven years ago in New Haven. As for the results, there is too much lead time in this business, but the results are there to see. We had a delegation call on the mayor of New Haven, Dick Lee, and they said we would like urban renewal against slum clearance for our neighborhood, which is called Worcester Square, and they said we'd like to save this neighborhood, get rid of the troubled parts of it and stabilize it, see it come back. And we planned an urban renewal project with them very carefully. Planners, particularly architect planners, like tall buildings. And I remember that there is one substantial building on Worcester Square itself, which had to come down. It was a convent school, and the convent school had decided to leave the area and there was nothing we could do although we tried to persuade them to stay.

So we inspected the convent and found it really was not realistic to try to rehabilitate it for any purpose that we could conceive of and so it was decided that the property should be acquired when the school left and torn down and the site offered for housing. And the planners, it seems, modest by New York or Boston standards, the planners proposed six-story buildings, and the neighborhood said we don't like that, that is out of scale for Worcester Square, we want only two-story buildings. And we said okay, it is your neighborhood, if that is the way you want it, that is the way it will be. And if you go to Worcester Square today you will see that is the way it is.

We have tried to do this in Boston, and I think on the whole succeeded.²²

Buildings on urban renewal disposition sites are arranged to help users find their way around, to strengthen the visual identity of various parts of the city, and for other user reasons.²³ By contrast, traditional zoning often sacrifices the interests of users in order to treat property owners similarly. The placing of commercial

²²"Urban Challenge," Proceedings of the Intercollegiate Conference Held at MIT, (Boston, April, 1966), p. 30.

²³See pp. 166-172, and Figures 19 and 20.

buildings on all four corners at a busy intersection, locating apartment buildings as a "buffer" to protect detached homes from industry, and the dark canyon streets of the skyscraper districts are examples of traditional zoning producing bad site planning.²⁴ User objective zoning might concentrate all commercial buildings on one of four corners, to further shopping convenience and motorist safety; open space or lower density of housing would be planned as a real buffer to protect occupants of detached homes from an adjacent industrial area; and skyscrapers could be made free-standing, with open space or lower buildings adjacent to them, to bring sunlight to pedestrians and office workers.

Because so many of the objectives of zoning have failed, and in view of the obstacles which zoning throws up before programs whose objectives are in fact more attractive, it is proposed that the public development and control programs be granted exemption from zoning regulations.²⁵ This exemption would include construction on urban renewal disposition sites, the public housing program, the historic districts, and urban redevelopment corporations, as well as subsequent programs similar to any of these. Adjustments these programs will need if they are to operate without zoning are suggested in later paragraphs. Zoning would still operate as a residual system where none of the above

²⁴See pp. 42-43.

²⁵The General Plan (1950) names zoning as the basic tool for its implementation. See p. 39. By comparison, "the [1965/1975 General Plan's] reliance on Urban Renewal for the achievement of its goals in a remarkably short period of time represents a new departure in comprehensive planning." 1965/1975 General Plan, p. 144.

programs is acting. This too is explained below.

Every public or private land developer should be required to face a public hearing and demonstrate why he should have a building permit.²⁶ This hearing would in most cases be summary and without opposition, or waived altogether where the applicant has used informal means to coordinate with interested parties, or where the proposal follows carefully made and widely approved neighborhood or project plans.²⁷ It will be demonstrated below from the number of building permits of various types issued each year, from the size distribution

26 "Altogether, the batch of cases on delegation of zoning powers demonstrates that the law of delegation would be strengthened if the courts were to deemphasize the statutory standards and to emphasize the degree of procedural safeguards.

"The protection that comes from a hearing with a determination on the record, from specific findings and reasons, from an opportunity for outside critics to compare one case with another, from initial supervision by the legislative authority of the city or state, and from judicial review—all this is likely to be superior to protection afforded by definiteness of standards." Kenneth Culp Davis, Administrative Law Treatise, I (St. Paul: West Publishing Co., 1958) pp. III, 113.

27 "Even where formal proceedings are fully available, informal procedures constitute the vast bulk of administrative adjudication and are truly the lifeblood of the administrative process." From the Report on the Attorney General's Committee on Administrative Procedure (1941), quoted in Kenneth Culp Davis, Administrative Law Text, Hornbook Series, (St. Paul: West Publishing Co., 1959), p. 80.

"In each administrative agency there are generally two stages of adjudication. The first stage is informal, in which decisions are made on the basis of informal correspondence, conferences, interviews and inspections, rather than on the basis of formal hearings.

"The second important area involving the extensive utilization of informal procedure is within the formal hearing stage itself. Contrary to popular scholarly view, full-fledged legal procedure (notice, hearing with cross-examination, a record with adequate findings to support conclusions, and decisions based upon hearing records with the opportunity for court review) is rarely employed. Procedure in the formal

of all buildings issued permits, and from the size distribution of residential buildings issued permits, that it would not be a great administrative burden to have in effect a public hearing for every building permit issued.

The number of applications for permit to erect a new building, make an alteration, or change occupancy in Boston was as follows:²⁸

	<u>Long Form</u>	<u>Short Form</u>	<u>Amendment</u>	<u>Foundation</u>
1966	1307	5099	353	88
1965	1448	6014	355	43
1964	<u>2986</u>	<u>6660</u>	<u>427</u>	<u>61</u>
Average	1914	5924	378	64

Short form permits are granted over the counter without inspection of plans, visit to site, or appeal. Estimated average cost of short form improvements is about 500 dollars. The short form, building foundation permits and most amendments to permits could probably be administered as they are now, without a hearing.

Boston zoning administration is basically involved with processing long form applications, which averaged 1914 per year in 1964-1966. Administrative burden of reviewing 1914 applications annually by the procedure suggested here is manageable. This would involve hearings for about 10 building permits daily, assuming 200 working

stage is shortened through the use of prehearing conferences and conferences during the course of the proceedings." Peter Woll, Administrative Law: The Informal Process, (Berkeley and Los Angeles: University of California Press, 1963) pp. 25, 28.

²⁸From daily log of action on building permits kept by the City of Boston Building Department.

days each year. By comparison, the Board of Appeal averaged hearings for 345 building permit application appeals annually in 1965 and 1966. From three to five Board members were present at each hearing. The Board could in effect quadruple its decision capacity if each Board member sat alone as a hearing examiner.

When the largest residential and non-residential buildings erected in a year are ranked by size, the importance of the biggest forty buildings erected each year stands out.²⁹ In 1964, 2111 building permits for new buildings were issued. In 1965, 413 permits were issued. In both these years, the 40 largest buildings are about ten times as important as the second 40 largest buildings, using cost as a measure of importance. In 1964 the 40 largest buildings accounted for almost 50 percent of the total construction cost. In 1965 the 40 largest buildings accounted for over 70 percent of the total construction cost. See Figure 24.

A summary procedure could be adopted for the less important buildings, with a more elaborate procedure for the 40 largest buildings reviewed each year. A building whose estimated cost is more than 185,000 dollars will probably be among the 40 largest, according to Figure 24. A careful decision process for these 40 largest buildings each year will account for an estimated 60 percent of all

²⁹These figures are taken from the City of Boston Building Department Annual Reports, which list details for all permits of over 100,000 dollars each.

See John Herzog, "Structural Changes in the Housebuilding Industry," Land Economics, XXXIX, No. 2, (May, 1963); Leo Grebler, "Reflections on the 'New Scale,'" Town Planning Review, XXXIV, April, 1963).

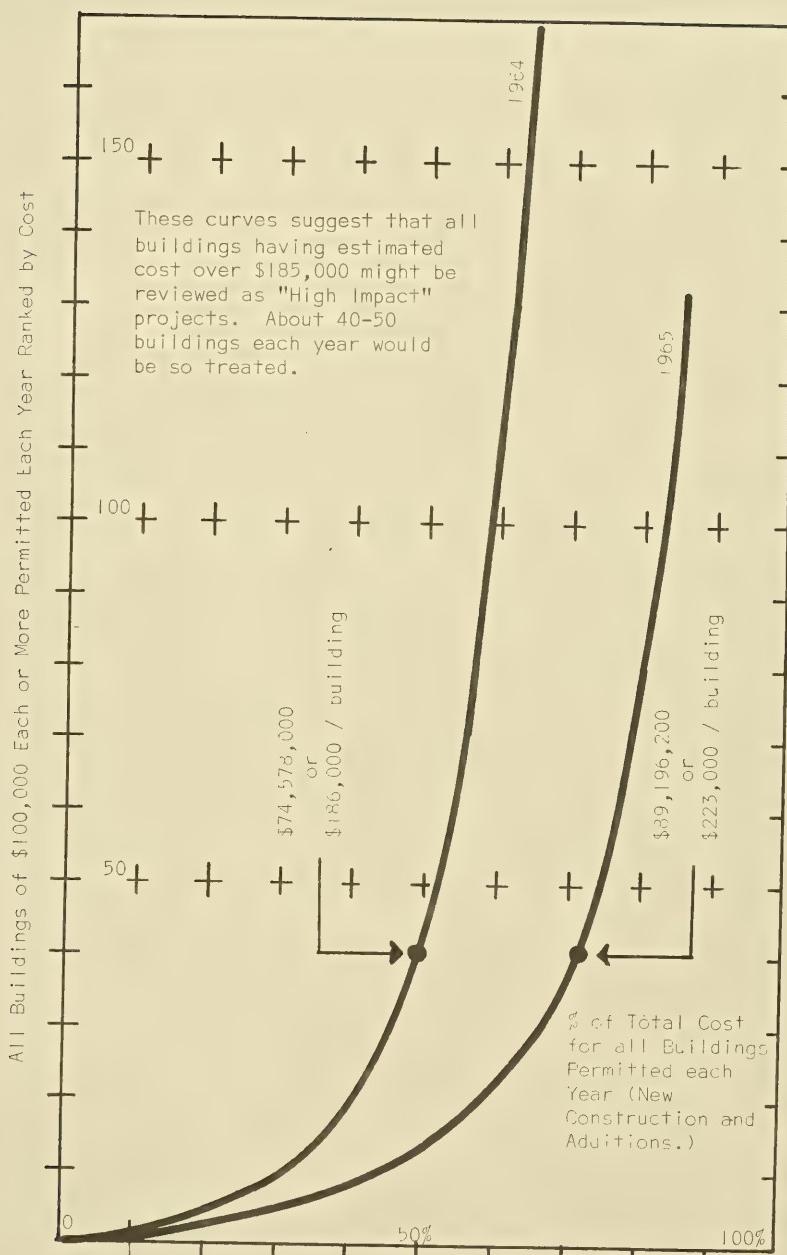


Fig. 23. -Cumulative Cost of Largest Buildings Permitted in Boston in 1964-1965 in Percentage of Total Cost for All Buildings Permitted.

construction by cost.

If the largest 102 buildings rather than the largest forty buildings had been reviewed each year between 1959 and 1965, such a control process would have affected 78 percent of all construction during that period. Table 27.

Another way of examining this same data is through size distribution of new residential buildings. If all buildings having more than eleven dwelling units each are subjected to a careful decision process, this will involve only about 21 percent of all residential buildings (or less than 120 residential buildings annually), yet this procedure will cover about 78 percent of all new dwelling units. Of course important applications can be distinguished from unimportant ones by other means than size. An important application for a building permit could be defined as one which is likely to be opposed. There are many methods by which an administrative agency can design a summary procedure for unimportant cases, and an elaborate procedure for important cases. Methods of notice (outdoor posting, newspaper, mail) can be varied; the time between notice and hearing can be varied; the number and rank of hearing examiners or hearing officials can be varied. The right to demand a hearing can be substituted for the right to speak at a routinely scheduled hearing. Conferences, correspondence, telephone calls and polls can be a substitute or supplement to the public hearing. An example was given³⁰ from administration of the present Zoning Code where the Code draftsman

³⁰See p. 150.

TABLE 28

1959-1965 IMPORTANCE OF BUILDINGS COSTING \$100,000 OR MORE IN BOSTON

	1959	1960	1961	1962	1963	1964	1965
Number of buildings costing \$100,000 or more	48	79	69	36	129	169	132
Total number of buildings built or altered	5995	5811	6104	6801	7169	7805	5899
% costing \$100,000 or more in numbers	0.8%	1.3%	1.1%	1.2%	1.8%	2.2%	2.2%
Value of buildings costing \$100,000 or more	\$86,698,600	44,613,900	45,455,900	64,079,200	143,558,100	98,878,700	\$106,558,200
Total value of new buildings and alterations	\$91,877,000	59,698,300	64,613,300	83,030,800	171,065,800	153,629,700	\$125,111,900
% costing \$100,000 or more in dollars	94%	75%	70%	77%	84%	64%	85%

TABLE 29

1960-1966 SIZE DISTRIBUTION OF NEW RESIDENTIAL BUILDINGS IN BOSTON^a

Size of Building	Number of Dwelling Units	Percentage of all D.U.'s Proposed	Percentage of All Residential Buildings
1 Family	2,385	10	58
2 Family	1,112	4	14
3-5 Family	497	2	3
6-10 Family	1,221	5	4
11-20 Family	4,099	18	7
21-50 Family	6,199	27	5
51-100 Family	2,198	9	7
over 100 Family	5,679	25	2
Total	23,390	100	100

^aData derived from Housing in Boston, 1967.

successfully anticipated which kinds of variance were important and deserving of a procedural nicety not made available to less important variances.

Anyone should be permitted to comment at these adjudications, not just property owners. Tenants, neighborhood organizations, representatives of points of view ("good design," Black Power, the Antiquities, etc.), political figures, and representatives of other public agencies can be expected, based on recent Boston experience with hearings.

The official or officials who are informed by such conferences and hearings should have discretion to interpret qualitative standards as well as quantitative, and should have power to make responsive decisions or recommendations as well as decisions interpreting anticipatory controls.

Statutory standards from the historic district legislation, and the urban renewal documents controlling development of disposition sites are the best examples of qualitative controls in current Boston practice.³¹ Qualitative controls communicate user objectives and are the

³¹ Some historic district standards are quoted on p. 52, some urban renewal standards on pp. 178-179. Qualitative and quantitative standards are intermingled in the housing case study of pp. 176-178. Paul F. Lazarsfeld and Allen H. Barton, "Qualitative Measurement in the Social Sciences: Classification, Typologies and Indices," in Daniel Lerner and Harold D. Laswell, editors, The Policy Sciences (Stanford: Stanford U. Press, 1951) p. 187. Gutkind relates the qualitative control exerted by Philip II of Spain over his architect Juan de Herrera in building El Escorial, the most famous edifice erected by Philip. "It should be simple in form, severe in appearance, noble without portraying arrogance, and majestic without circumstances," and should be, "a monastery, a temple and a tomb." E. A. Gutkind, Urban Development in Southern Europe: Spain and Portugal, International History of City Development, III (New York: The Free Press, 1967), p. 261.

language of the professional environmental designers.

Under a user objective system quantitative controls would nevertheless be useful in these situations:

1. To implement a neighborhood plan.³² Quantitative control is recommended especially when the objective of the neighborhood plan is to retain existing buildings or building forms.
2. After a project has been erected or approved for erection, quantitative controls can be imposed to limit additions or changes to the approved project in the future. These are sometimes called "maintenance" controls.³³
3. Quantitative controls might establish minimum as well as maximum performance for the applicant.³⁴ For example, rather than simply require a front yard in order to limit exploitive behavior of the property owner, in the traditional zoning manner, user objective zoning might specify the front yard as a minimum and maximum, to accomplish building massing considered necessary to give users a sense of enclosure.
4. Sometimes one quantitative element, such as front yard, would be controlled for one group of buildings, while another element such as minimum height would be controlled for another group of buildings, leaving in each case many dimensions to be proposed by the applicant

³²See pp. 212-214 below.

³³"In short, the old story--design first, regulations afterward." Letter from Edwin B. Forrest, quoted p. 132.

³⁴The reason why traditional zoning sets maximum but seldom minimum limits on intensity is discussed on pp. 39-40.

either for objectives dear to him and his users, or to fulfill qualitative objectives which have been established for the property.

The difference between responsive control and anticipatory control is similar to that between induction and deduction, and to that between derived and applied rules. The control for the particular proposal is induced or derived from adopted plans and controls, from the applicant's needs and plans, from new objectives presented or discovered during the design and design review processes. Responsive controls take effect later in the design process than do anticipatory controls. The sequence of first designing and then imposing controls over a building group is a familiar one in development practice and law. It predates zoning.³⁵ Most design decisions for urban redevelopment corporations, for proposals within historic districts, and on many urban renewal disposition sites are made by the applicant, and responded to by public officials.

It was shown³⁶ that the Boston Zoning Code and maps in theory depend on anticipatory controls. The same amount of detailed pre-regulation is imposed on each property in the City, according to owner objective zoning. In fact in 1965 and 1966 the Board of Appeal attached conditions to over half the permits they approved, and this constitutes responsive control.³⁷ There are recent zoning cases upholding the right of the city to rezone specific property in

³⁵Charles S. Ascher, "Private Covenants in Urban Redevelopment," in Coleman Woodbury, ed., Urban Development: Promises and Practices, (Chicago: University of Chicago Press, 1953), p. 221.

³⁶P. 45.

³⁷P. 152.

exchange for the developer's promise to build in a certain way.³⁸

Responsive controls as part of the proposed system would be useful in those parts of the city where neighborhood plans have not been made. Neighborhood planning costs about fifty times more than conventional zoning per unit of urban land area,³⁹ and takes longer. Present buildings, spaces and circulation must be analyzed, social and economic goals established and translated into proposed building forms having neighborhood identity, public improvements must be planned and coordinated with private plans, and often some forceful and expensive implementation such as land assembly must be programmed. There must be participation by users, property owners, private and staff design professionals, and by a rule making agency such as the Zoning Commission in planning decisions. It might be years before all Boston neighborhoods would have such plans; in the meantime, responsive controls would be appropriate in many parts of the city.

The design professions⁴⁰ make an art and science of satisfying needs of users of enclosed and outdoor spaces and movement channels. Most architects today forecast human movements and functioning that will occur in a proposed building. Their design product becomes the

³⁸Church v. Islip, 8 N.Y.2d 254, 168 N.E.2d 680 (1960); Sylvania Electric Products Co. v. City of Newton, 183 N.E.2d 118 (Mass. 1962).

³⁹This is the ratio between per acre fees paid to consultants for contemporary Boston neighborhood plans such as Back Bay and for preparing the 1965 Zoning Code and Maps, adjusted for decreasing value of the dollar over time.

⁴⁰W. J. Goode, "Community Within a Community: The Professions," American Sociological Review, XXII, (1957), 194.

counter-form of human activity.⁴¹ Circulation systems are designed to minimize trip lengths,⁴² to help users find their way, for safety, and for sequential perceptual experience.⁴³ Landscape architects apply ecology in creating niches for users of their sites.⁴⁴ Urban planners specialize in the determination and ranking of the needs of large populations.⁴⁵

Research-based texts on housing design,⁴⁶ the city man's

⁴¹"For the purpose of discussion, design may be defined as the 'conscious organization of physical forms and space to satisfy a particular series of human purposes' (the purposes may well be emotional or aesthetic as well as physical)." Sydney H. Williams, "The Role of Design," Planning 1950, Proceedings of the Annual National Planning Conference, (Chicago: American Society of Planning Officials, 1951), 165.

Vincent Scully, Jr., Modern Architecture, the Architecture of Democracy, (New York: George Braziller, 1961).

Rayner Banham, Guide to Modern Architecture, (Princeton, N.J.: Van Nostrand Co., Inc., 1961).

⁴²Alan M. Vorhees, et al., "Traffic Patterns and Land Use Alternatives," Trip Characteristics and Traffic Assignment, Bulletin 347, (Washington: Highway Research Board, 1962).

⁴³Donald Appleyard, Kevin Lynch, and John R. Myer, The View from the Road, (Cambridge, Mass.: MIT Press, 1964).

⁴⁴Philip H. Lewis, Jr., "Environmental Design Concepts for Open Space Planning in Minneapolis and Its Environs," III, Parks and Recreation in Minneapolis, (Urbana: Dept. of Recreation and Municipal Park Administrations, University of Illinois, December, 1965).

"Ecological Architecture: Planning the Organic Environment," Progressive Architecture, (May, 1966), 120.

Ian McHarg, "Man and His Environment," in Leonard J. Duhl, ed., The Urban Condition, (New York: Basic Books, 1963).

Ian McHarg, "The Ecology of the City," American Institute of Architects Journal, XXXVIII, No. 5, (November, 1962), 101.

⁴⁵F. Stuart Chapin, Jr., Urban Land Use Planning, 2nd ed. (Urbana: University of Illinois Press, 1965).

⁴⁶Robert D. Katz; Design of the Housing Site, (Urbana: Small Homes Council, 1966).

Urban Land Institute and National Association of Home Builders,

perceptual needs,⁴⁷ on the coordinated design of land use and transportation facilities, on urban renewal,⁴⁸ rehabilitation,⁴⁹ historic preservation,⁵⁰ urban landscape,⁵¹ urban design,⁵² home associations,⁵³ recreation facilities,⁵⁴ and other user elements of the environment published between 1954 and 1967 show the rapid advance in this field.

Large scale new towns,⁵⁵ redevelopment projects,⁵⁶ shopping

New Approaches to Residential Land Development: A Study of Concepts and Innovations, Urban Land Institute Technical Bulletin No. 40, (Washington: Urban Land Institute, 1961).

⁴⁷ Kevin Lynch, The Image of the City, (Cambridge, Mass.: MIT Press, 1960).

⁴⁸ Roger Montgomery, "Improving the Design Process in Urban Renewal," Journal of the American Institute of Planners, XXXI, No. 1, (February, 1965), 7.

⁴⁹ William W. Nash and Miles L. Colean, Residential Rehabilitation: Private Profits and Public Purposes, (New York: McGraw-Hill, 1959).

⁵⁰ U.S. Dept. of Housing and Urban Development, Preserving Historic America, (Washington: U.S. Government Printing Office, 1966).

⁵¹ Gordon Cullen, Townscape, (New York: Reinhold, 1961).

⁵² Paul D. Spreiregen, Urban Design: the Architecture of Towns and Cities, (New York: McGraw-Hill, 1965).

⁵³ U.S., F.H.A., Planned Unit Development with a Homes Association, Land Planning Bulletin No. 6, (Washington: U.S. Government Printing Office, December, 1963). Urban Land Institute, The Homes Association Handbook: A Guide to the Development and Conservation of Residential Neighborhoods, Technical Bulletin No. 50, (Washington: Urban Land Institute, 1964).

⁵⁴ Outdoor Recreation Resources Review Commission, Outdoor Recreation for America, (Washington: U.S. Government Printing Office, 1962).

⁵⁵ Clarence S. Stein, Towards New Towns for America, (New York: Reinhold, 1957).

⁵⁶ Urban Land Institute, Baltimore's Charles Center, A Case Study of Downtown Renewal, Technical Bulletin No. 51, (Washington:

centers,⁵⁷ recreation facilities,⁵⁸ institutions⁵⁹ show the capability of professional environmental designers to satisfy complex user needs. The professionals themselves have improved their abilities by creation of new disciplines such as urban⁶⁰ design, and by the establishment of new professional schools.⁶¹ Within the proposed control system the professional environmental designer would have these roles:

1. Public staff designers would participate in neighborhood plan preparation.
2. Consultants representing neighborhood constituencies would also participate. Neighborhood plans could become zoning laws if adopted by the Zoning Commission.
3. Private professional designers would prepare the larger building or building group proposals. The quantitative importance of a few large

Urban Land Institute, 1964).

⁵⁷Victor Gruen and Larry Smith, Shopping Towns U.S.A.: The Planning of Shopping Centers, (New York: Reinhold, 1960).

⁵⁸Harland Bartholomew and Associates, Master Plan for Balboa Park, San Diego, California, (St. Louis: Harland Bartholomew and Associates, 1960).

⁵⁹Richard P. Dober, Campus Planning, (New York: Reinhold, 1963).

⁶⁰Perry Neubauer and Roy Mann, "Urban Design: A Basic Reappraisal," Connection, (April, 1965).

For a summary of recent urban design definitions and ideas see Henry Fagin and Carol H. Tarr, "Urban Design and Urban Development," in Leo F. Schnore and Henry Fagin, editors, Urban Research and Policy Planning, Urban Affairs Annual Reviews, I, (Beverly Hills: Sage Publications, Inc., 1967), 413.

⁶¹One or more new Master's degree programs in city planning is being formed each year.

American Institute of Planners, "Recognition of Planning Schools for AIP Membership Purposes," (American Institute of Planners, May, 1965), (Mimeo graphed).

proposals each year compared to many small ones has been indicated. It is doubtful that professional design submissions should be required of all applicants. This would be an unnecessary burden on the home owner and small businessman, and might cut off indigenous styles and folk art, and detract from the diversity and free expression which adds delight to the city.

4. Designers with administrative authority would review all applications for building and occupancy permits.⁶² They would apply anticipatory controls when available, but would always be prepared to use

⁶²For a similar role see Providence, R.I., Proposed Zoning Ordinance, Article 12, Zoning Administrator, (Providence: City Plan Commission, 1966).

"Now that Boston's new Zoning Code has been in effect since January, 1965, consideration should be given to its further updating with respect to Urban Renewal projects, recent transportation changes, and objectives set forth in this plan. It would be desirable, in particular, to add provisions to the Code for flexible controls over construction in planned districts, subject to additional public approval and design review." 1965/1975 General Plan, p. 159.

In Reid v. Architectural Board of Review, 119 Ohio App. 67, 192 N.E.2d 74 (1963) the court upheld the Board of Review in refusing to permit construction of a one story residence in an area developed with two story buildings. The Board had reasoned that "this project . . . does not maintain the high character of community development in that it does not conform to the character of the houses in the area." The professional competence of the Board members was cited by the court: "The employment of highly trained personages such as architects for the purpose of applying their knowledge and experience in helping to maintain the high standards of the community is laudable and salutary and serves the public good. . . ."

When borne in mind that the members of the Board are highly trained experts in the field of architecture, the instruction that they resolve these questions on 'proper architectural principles' is profoundly reasonable since such expression has reference to the basic knowledge on which their profession is founded." This case demonstrates many principles of development control proposed in this Thesis such as that minimum height control is as proper as maximum height control; the use of qualitative standards; review of each building proposal by officials having discretion; recognition of expertise of environmental designer.

responsive controls, so that unexpected and unofficial building proposals have an opportunity to be erected. A dialogue between the public design official, and the private applicant's designer, with public participation, would be routine.⁶³ Where the decision of the design official is responsive, contrary to anticipatory controls, or in some other way exceeds the authority delegated to him, his decision would be a recommendation to a rule-making body.

5. Private and public designers must represent those users who will not or cannot speak for themselves. Chapter VI data⁶⁴ shows that low income residents do not speak in opposition as frequently as higher income residents. Anonymous future users of a proposed project cannot speak for themselves and need representation against nearby residents who oppose the proposed project as an intrusion in their domain.

As the zoning ideal of a cone-shaped city skyline made of buildings which decrease in size with distance collapses, neighborhood scale plans and project scale plans become more important. In Boston a neighborhood is a distinct part of the city, recognized by its occupants or users. A residential neighborhood usually contains less than 25,000 people. Most residents identify themselves with their neighborhood more than with the street they live on, more than with their city.⁶⁵ Members of social organizations are often from the same

⁶³Michael Argyle, "Social Pressure in Public or Private Situations," Journal of Abnormal and Social Psychology, LIV, (1957), 172.

⁶⁴Pp. 161-162, Tables 23 and 24.

⁶⁵Michelson has shown by interviews with Boston area residents that the neighborhood is considered much more important by them than

neighborhood.

Most user objective plans in which the public planning agency participates are at neighborhood scale.⁶⁶ The urban renewal projects and historic districts are neighborhoods. Users can effectively participate in neighborhood planning because their primary loyalty is to the neighborhood. Professional planners are able to handle both perceptual and non-spatial (social and economic) data at the neighborhood scale. Therefore neighborhood plans, but not city plans, can propose actual building massing to strengthen local identity.⁶⁷

Eighty-nine of one hundred and fifty-two census tracts are controlled by the H Apartment Zoning District.⁶⁸ That is, the list of uses permitted absolutely or conditionally in the H District applies in all

either the block or the entire city.

William Michelson, "An Empirical Analysis of Urban Environmental Preferences," Journal of the American Institute of Planners, XXXII, No. 6, (November, 1966), 355.

Robert L. Wilson, "Liveability of the City: Attitudes and Urban Development," in F. Stuart Chapin, Jr. and Shirley Weiss, editors, Urban Growth Dynamics, (New York: John Wiley & Sons, Inc., 1962), 371.

⁶⁶Boston's planning agency, the B.R.A., publishes about eight times as many neighborhood or project scale studies or reports as city scale studies or reports, according to an inventory of the B.R.A. library made in July, 1967.

⁶⁷Spreiregen gives examples of past plans which proposed building massing for a neighborhood or project scale, beginning with H. P. Berlage's plan for extension of Amsterdam early in the twentieth century. Paul D. Spreiregen, Urban Design, (New York: McGraw-Hill Co.), p. 89.

In their plan for a 25,000 dwelling extension of Toulouse, France, the firm of Candilis, Josic and Woods used systems of buildings rather than either zoning or fixed building masses as the planning media. Shadrach Woods, "Le Mirail, A New Quarter for the City of Toulouse," Washington University Law Quarterly, MCMLXV, No. 1, (February, 1965), 4.

⁶⁸Estimate by the author.

those neighborhoods. These neighborhoods are quite different. For example, the H-5 and H-2-65 Districts coincide with census tracts where average family income in 1960 was 8,200 dollars. In the H-2 District, average family income in 1960 was 3,800 dollars.

Of the first seven successful petitions for amendments to the Zoning Code in the 28 months between January 1965 and April 1967, three were sponsored by residents of Back Bay, and are obstacles to expansion of dormitory, fraternity, sorority, lodging and boarding houses there.⁶⁹

In other neighborhoods zoned H Apartment, residents would be indifferent to, and might even encourage the invasion of these uses. Under the proposed system, where planning and zoning is on a neighborhood basis, a list of permitted uses custom-made for the particular neighborhood can be derived.

The project is the other scale appropriate to user objective planning and control.⁷⁰ A project is a multi-building proposal all

⁶⁹From records of the Secretary of the Boston Zoning Commission.

⁷⁰Hoyt speculates that the location of projects will focus land values in the future, replacing the gradient of value which was the "dynamic factor" in predicting movement of land values in the past.

"In the past, urban growth proceeded in concentric circles from the port or the railroad stations, or in star-like forms along elevated lines or subways."

.....
This progression of values could be charted in advance and a land speculator could buy vacant land in advance of the path of building and wait for the growth of the city to reach his property."

.....
"The suburban developments in residences, shopping centers, factories and office buildings have tended to lower central land values, or at least have prevented them from rising in proportion to the decline in the purchasing power of the dollar."

.....
"Future dynamic factors in land values will result from the

under a single control, or if might be a building⁷¹ whose estimated cost is more than 100,000 dollars. Project scale proposals are sometimes not anticipated by a neighborhood plan because such proposals respond to demands located outside the neighborhood or to the needs of an existing organization for renewed or enlarged quarters, rather than to objectives of a neighborhood plan. Because each project scale plan is a large concentration of wealth proposed to be added to the City's resources, it is difficult for officials to turn down the project.⁷² User objective zoning must meet such proposals head-on by rapidly focusing citizen and professional public staff review on them. User objective zoning procedure must accommodate negotiations between the applicant and public officials over the location and character of proposal,⁷³ and citizens must be allowed to participate in this dialogue.

Integration of different types of urban land uses into an inter-related whole in which each use complements or adds to the value of the others. The new nucleations will tend to lower land values in the older types of land use patterns, which will become less desirable as the new types of planned communities emerge. There will be a decline in the demand for older, poorly planned residential areas where the houses are on narrow lots on heavy traffic streets; shopping districts without adequate off-street parking and not having a complete selection of fashion goods; multi-storied factories on congested sites, and office buildings or apartments without parking facilities. Land values under these uses will tend to decline." Homer Hoyt, Dynamic Factors in Land Values, Urban Land Institute, Technical Bulletin No. 37, (Washington: Urban Land Institute, 1960), pp. 14-15.

⁷¹This is a generous interpretation of the curves of Figure 23 towards inclusion of projects. New buildings of 100,000 dollars and over are listed annually in the City of Boston Building Department annual reports.

⁷²See pp.180, 202, Figure 22, Table 28.

⁷³For an example of a plan between the neighborhood and project scales, involving relocation of a cluster of related businesses, see U.S. Department of Agriculture, Wholesale Florist Facilities for Boston,

A procedure by which responsive controls are applied to project scale proposals should not discriminate in favor of these larger proposals. The procedure should be available to any size proposed. Yet it will be the big projects, less than 200 per year in number, which will account for about three-fourths of annual change measured by cost.⁷⁴

Here are suggested changes in functions of Boston development and control agencies that would permit full scale experiment with the principles discovered by this Thesis:

1. Within the historic districts the zoning regulations and administration would not apply. The historic district commissions would exercise control over building bulk, uses of space and parking, as well as historic preservation. The historic district commissions should rely on express, anticipatory controls, custom written for each block in the district.
2. The historic district idea could be applied in changing areas, where there are clear objectives, a detailed development plan, and good leadership to serve as a decision making commission. There are non-residential areas where the common interests of the proprietors, already cared for by their business organization, could be furthered even more through such an official building control district. The central business district, North Station Area, and some of the outlying commercial

Marketing Research Report No. 570, (Washington: U.S. Government Printing Office, 1962); and U.S. Department of Agriculture, Boston Wholesale Food Distribution Facilities, Marketing Research Report No. 732, prepared by Earl G. Taylor, (Washington: U.S. Government Printing Office, 1965).

⁷⁴See pp. 200-202, Figure 23, Table 28.

squares are possibilities. This form of administration might be tried within an urban renewal area during project execution and subsequent to redevelopment. At that point there is a strong plan and an active neighborhood organization.

3. The Boston Redevelopment Authority, Boston Housing Authority, Public Facilities Department, urban redevelopment corporations and other public and semi-public development agencies should be exempt from zoning regulations and administration. Objectives and plans of these agencies should be spelled out explicitly to make up for the absence of zoning control. Each of the agencies should manage its own planning and urban design, and do its own negotiating with developers and architects, and its own coordination with other agencies and interested parties.

To insure that each development agency permits other interests to influence what it builds a separate agency should have power to grant or deny building permits to these public agencies, after a public hearing. That permit-granting agency would determine whether the public agency seeking the permit is pursuing objectives established for it by the City Council, whether its building plans are acceptable to nearby residents and users, and whether values and objectives of neighborhood plans are being respected. It is better that this permit-granting agency not be the Zoning Commission, an agency that may become very committed to neighborhood plans. It is suggested that the Board of Appeal have this function. The Board of Appeal will have capacity to handle this case load, if another proposal of this Thesis is carried out, namely, the transferring of all zoning jurisdiction over private development now held by the Board of Appeal to the Zoning

Commission.

In view of the perfect record of the Boston Housing Authority and Boston Redevelopment Authority sponsored developers who sought permits from the Board of Appeal in 1965-1966, this will not be an onerous requirement for these public development agencies. It will be a check against arbitrariness and poor communication with users in the design and location of public and public-sponsored developments. As a reciprocal check on Board of Appeal promptness there should be a severe limit on the period of time a public development agency should have to wait for a hearing and decision by the Board of Appeal.

4. In the remainder of the city, that is outside historic district and on sites which are being improved by a private rather than public developer, a hearing or less formal adjudication confrontation conducted by the Zoning Commission or professional hearing examiner who reports to the Zoning Commission is proposed to control issuing permits. The Zoning Commission could adopt whatever anticipatory plans, standards and controls it is reasonably sure of to guide developers in such areas, but must freely exercise responsive controls as well. The Zoning Commission would control private development single-handedly, without assistance from the Board of Appeal. The next few paragraphs explain why this is recommended.

The present Zoning Code places rule making or legislative functions in the Zoning Commission, and adjudication or administrative functions in the Board of Appeal. As rule maker the Zoning Commission is supposed to write standards for use of the Board of Appeal, and the zoning enabling act has also supplied standards to that Board. This

neat separation of rule making from adjudication is possible if some ideal urban form such as the gradient of buildings in intensity with distance from the center of the city is being pursued. An ideal urban form would minimize the need for the Board of Appeal by use of anticipatory, quantitative controls and at the same time would simplify the writing of standards to guide the Board of Appeal. But the proposed system accepts a lack of consensus over ideal urban form. Furthermore the Board of Appeal in fact exercises rule making functions. Its decisions are so numerous that taken together they have the effect of rule making.⁷⁵ The Board of Appeal grants most approvals on the basis of uniqueness,⁷⁶ rather than according to standards written to further an ideal urban form. Decision making with no standards except uniqueness is in effect rule making. Both the Zoning Commission and the Board of Appeal have been acting as rule making agencies over the same subject matter, and neither agency has enough control over the other to bring consistency into the system.

Under the proposed system, where a new rule may be proposed by the applicant or may be mutually discovered during the design and review process, it will not be desirable to give rule making functions to one agency and adjudication functions to another. For it will be impossible to anticipate whether a particular application for a building permit will invoke adjudicatory or rule making response. The hearing examiners, from whom appeals to the Zoning Commission can be

⁷⁵Table 14, p. 151.

⁷⁶Table 15, p. 152

taken, would specialize in adjudication and the Zoning Commission would specialize in rule making but the process will work without those labels. All actions would start with the applicant meeting with a hearing examiner, and would only go on to the Zoning Commission if some interested party, including the hearing examiner or Zoning Commission, decides that the matter should be appealed. The Zoning Commission thus would check the hearing examiners to maintain consistency.

The Zoning Commission has no such check over the Board of Appeal under the present system. Simply keeping the present system but allowing appeals from the Board of Appeal to the Zoning Commission is not as good a solution as the use of hearing examiners. As explained, the hearing examiners would be experts in environmental design and could input user objectives. Furthermore, the individual hearing examiner can negotiate with the applicant and other interested parties informally, through conferences and correspondence⁷⁷ while a Board cannot operate that freely.

Overall direction and coordination of this system of development and controls would be then accomplished by the Mayor and City Council. The City Council will adopt and amend the statutory objectives for each public agency and for the historic districts; will create, abolish and perhaps consolidate these programs and agencies;⁷⁸ will approve appointments to official commissions and boards; will fund public programs

⁷⁷ See pp. 178-184, 207-212.

⁷⁸ Recent home rule amendments to the Massachusetts constitution increase city council control over land development laws. Massachusetts, Constitution, Art. LXXXIX, replacing Art. II. Ratified November 8, 1966.

and projects; could adopt city-wide objectives and plans to guide all parts of the system; and could occasionally participate in decisions over particular development applications.

The Zoning Commission, with the help of hearing examiners, the Board of Appeal and the historic district commissions will issue building permits, after exposing proposals to public hearings or other adjudication procedures, and will interpret City Council intentions in making such decisions: It is proposed that routine appeals from these building-permit issuing agencies be made to a Court, and not to the City Council. This will save the City Council's time for its more important legislative functions. Nevertheless the City Council might retain the power to intervene in a hearing examiner, Zoning Commission, Board of Appeal or historic district commission decision when the Council observes one of its policies being misinterpreted, or when the Council wants to make a particular application an occasion for announcing a new policy.

The findings and recommendations of the final Chapter could be formulated into a comprehensive development code which would replace or amend present laws concerning zoning, control of subdivisions, historic districts, public housing, urban renewal, redevelopment corporations and building of public facilities.

The advantages of such a comprehensive code for Boston, and perhaps for other cities, are these:

A formal decision mechanism would be in operation which fits the actual decision process going on. The formal decision process at present is the Zoning Code and Map. The actual decision process is

the variance powers of the Board of Appeal, the public hearings and conferences conducted by the historic districts commissions and the Boston Redevelopment Authority for its own projects and those of urban development corporations, and the administrative decisions of various agencies and officials. The proposed system expressly recognizes these operating decision processes and proposes rules to guide them and coordinate them. This better fit of law to practice would remove needless ambiguity, confusion, and ritual which are so onerous to private citizens and land developers in their relations with public agencies.

The proposed system will offer procedural simplicity and certainty. If a private land or building owner wants a building permit, occupancy permit or subdivision permit, or a change in the existing control in order to make possible later building plans; if he wants to comply with existing control, or propose development which does not conform at the time of application, he will always apply to the building department and begin negotiating with a hearing examiner. This official, after negotiations and meetings with the applicant and other officials or interested parties, and perhaps after a public hearing, will either act on the application or forward a recommended action to the Zoning Commission or an historic district commission. Under the present system the applicant for a building permit or occupancy permit must decide which of several Zoning Commission powers to invoke, or which of several Board of Appeal powers to invoke. After pursuing a Map Amendment for months, he may be told to begin again with another agency, and ask for a Variance. Under the proposed

system the applicant would state only the facts of what he intends to do. It will be the responsibility of the public agency to give these facts a name, and specify an appropriate decision procedure.⁷⁹

The proposed decision system will be less inclined to ethical abuses by applicants and officials than the present system. There is no evidence that the present system is marred by bribery, partisan politics or favoritism. Nevertheless the present system invites such abuses because officials who operate it have power to affect costly development but lack clear public purposes to guide use of their power. Such officials are tempted to substitute their own purposes, when no higher purposes are evident. Having made the substitution, they are hidden from detection by the absence of clear standards against which their conduct can be judged. For example, the many tall buildings being erected all over the city make many people cynical about the Zoning Code's gradient of building size with distance from the Hub. There is no express standard against which the propriety of a particular decision over building height bulk can be judged.

Professional environmental designers, who would have key roles in the proposed system, have professional ethics and peers which safeguard their conduct. These professionals care more about a "better

⁷⁹This innovation is similar to that in court procedure from requirement that plaintiff--at some risk--declare whether he is suing in Contract, Tort, Replevin, Trespass, etc., to requirement that plaintiff simply state facts on which his cause of action is based. Fleming James, Jr., Civil Procedure, (Boston: Little, Brown & Co., 1965), p. 65.

designed" America than about personal gain.⁸⁰ They may pursue a visual definition of the public interest with too much zeal, but they will almost never accept bribes.⁸¹

The user objectives justifying each decision will have to be articulated before or after it, filling the present "purpose vacuum," and leaving little room for personal motives. Furthermore this articulation will give objective criteria against which the particulars of the decision can be tested.

Another safeguard to the proposed decision process will be the public nature of each decision. All interested parties will have an opportunity to present arguments and to criticize those of others. Every participant in a decision makes a commitment to its proper resolution, and will carefully scrutinize its outcome. The thought of making a decision for personal gain looms in the conscience of an official as an unthinkable betrayal of all the parties who contributed time to the negotiations and hearing.

The proposed system is modeled after the common law decision process, which demands high ethical behavior of its participants. Law judges are trained professionals whose conduct is watched by bar associations. Each appellate decision makes new law, but its

⁸⁰"'World Peace' or 'aid to the starving Chinese' may be just as much a personal goal for a particular individual as another dollar in his pay envelope." Herbert A. Simon, Administrative Behavior, (New York: Free Press Paperback Edition, 1965), p. III.

⁸¹The proposed system if adopted would be subject at any time to investigation by the Boston Finance Commission, a five member group appointed by the Governor. Massachusetts, Acts of 1909, c. 486 as amended.

correctness can be judged by precedents and by reasons given by the court. The two or more parties who participate in the process watch its outcome. Of course the proposed administration will be much less formal than a law trial.

In furthering user objectives rather than a supposed competition between property owners the proposed system may in fact be of great benefit to property owners by improving the total worth of Boston land and buildings. Conventional zoning is so directed towards preventing one property owner from gaining an advantage over his neighbor that it sometimes reduces the value of both properties. For example, a twenty-one story building surrounded by four one-story buildings may be a more valuable building group than five five-story buildings crowded near one another and each subject to the same height control.

A property owner is also benefited by the proposed system in his role as an urban person who uses the city. For example, a property owner may be hurt financially by failing to gain permission to replace an historic building with a new, larger building. At the same time as a pedestrian he may enjoy walking in the vicinity of his building and savoring historic character.

A city designed for the user promises more indoor and outdoor places suited to the numerous unpropertied groups who spend so many hours in Boston. These include suburbanites, Freedom Trail walkers, teenagers, college students, the aged, the disadvantaged, and minorities.⁸²

⁸²The central city of a large metropolitan area such as

Recognition that there is no consensus over which activities are to have the favored locations in the city, and no consensus over the overall physical form the city should take is a familiar and attractive idea. It recalls Wirth's famous defense of the metropolis, as a place where there is diversity between groups, yet rich interaction between them.⁸³ A city having diversity of building forms and activities might result from recognizing lack of consensus. The authorities recommending diversity as an urban goal are legion.⁸⁴

The proposed system gives a rationale for retaining sound though old buildings occupied by low income tenants who could not afford higher rents in new dwellings.⁸⁵

When such older buildings are located close to the Hub the present Zoning Code and maps generally encourage their replacement with higher density buildings. This is the South End situation.⁸⁶ If located further from the Hub the present Zoning Code will be a legal obstacle to rehabilitating these dwellings, especially when the

Greater Boston is known for its striking difference between nighttime and daytime populations. Generally, see Robert C. Schmitt, "Estimating Daytime Populations," Journal of the American Institute of Planners, XXII, No. 2, Spring, 1956; Gerald Breese, The Daytime Population of the Central Business District, (Chicago: University of Chicago Press, 1949).

⁸³Louis Wirth, "Urbanism as a Way of Life," in Paul K. Hatt and Albert J. Reiss, Jr., Cities and Society: The Revised Reader in Urban Sociology, (Glencoe, Ill.: Free Press, 1957), 46, reprinted from the American Journal of Sociology, XLIV, (July, 1938).

⁸⁴Kevin Lynch and Lloyd Rodwin, "A World of Cities," in Lloyd Rodwin, ed., The Future Metropolis, (New York: George Braziller, 1961), 16.

⁸⁵See pp. 55-57.

⁸⁶See p. 51.

rehabilitation would add one or more dwelling units to the structure. This is the Washington Park area situation.⁸⁷

The proposed system will help overcome the segregation by building types, building density and building age which now exists in the city,⁸⁸ and is reinforced by conventional zoning. Such segregation is an obstacle to democratic interaction among social classes, and to mobility by the disadvantaged.⁸⁹ Under the proposed system the Boston Housing Authority could be given clearer power to house its tenants within middle class neighborhoods.⁹⁰ Private proponents of construction of rental housing for predominantly detached home neighborhoods can state their objective directly, without need for the fiction that their site has unique topographic difficulties which make compliance with conventional zoning a hardship.⁹¹

Owner-occupants of rowhouse enclaves located near the center of the city will have a better conceptual basis for retaining these building forms, and resisting proposals to rebuild to higher densities. These results will come about from banishing the supposed gradient of building intensity discovered in 1950-1954 studies, and embodied in the zoning map.

The social differences between neighborhoods can be translated

⁸⁷See pp. 61-65.

⁸⁸See pp. 32-36.

⁸⁹See pp. 83-85.

⁹⁰See pp. 86-88.

⁹¹See pp. 140-142.

more clearly into custom written controls, where each neighborhood is permitted to prepare its own plans, and the compulsion to divide the city into a few internally uniform zoning districts has been eliminated.⁹² Admittedly this may encourage economic segregation. Conventional zoning makes economic segregation the rule.⁹³ The proposed system permits each neighborhood to help determine its own social mix.

Through urban renewal and urban redevelopment corporations the city can with more certainty provide the specific buildings and activities needed by a neighborhood. For example, the objective of bringing new retail facilities into older neighborhoods is being accomplished by offering publicly acquired sites to developers of retail centers. Forty years of commercial zoning was not able to accomplish this.⁹⁴

Innovations in building form and activities will be more easily approved for construction under the proposed system, which will have the capacity to accept controls proposed by the applicant.⁹⁵ Innovations will probably be relegated to parts of the city which do not have a strong building form which has been studied and proposed for retention.

The decision process proposed here with its involvement of

⁹²See p. 213.

⁹³See pp. 81-83.

⁹⁴See pp. 185-186.

⁹⁵See pp. 206-207.

many people, should be an educational experience. Interest groups will learn more about one another and their common environment. Professional environmental designers will learn from users which of their ideas are acceptable. Both of these types of learning can be observed at public hearings in Boston on development and planning questions.

It is likely that a more visually attractive city should result from the increased input of professional environmental designers, who are expert at these matters.⁹⁶

The proposed system will strengthen historic preservation by giving power to control building bulk, parking and uses of space to the historic commissions, will simplify the establishment of more historic districts, and will permit historic controls to be imposed on isolated buildings or building groups which are not part of historic areas of district size. The latter will be made possible by eliminating the concept of zoning districts, and permitting controls for one lot to be different from the next lot.⁹⁷

Apparently the greater increased activity by public development agencies stimulates rather than preempts privately sponsored construction, judging from Boston's experience in 1961-1967.⁹⁸

The proposed decision process is unlikely to cost substantially more than the present procedure. Much of the cost can be borne by applicants and appellants through fees. Board and

⁹⁶See pp. 167-172, 207-210.

⁹⁷See pp. 70-74, 213.

⁹⁸See Tables 6-8, pp. 97-99.

Commission members donate their time or receive modest salaries.

There are approximately nine full time employees working exclusively in zoning administration within the B.R.A. (giving staff support to the Zoning Commission), Board of Appeals and Building Department. There are sixteen officials who work part time (only five with salaries) as members of the Board of Appeal and Zoning Commission.

If the proposed system were adopted, approximately four full time staff members could be transferred to other departments, and replaced with full time hearing examiners with professional design credentials. The Board of Appeal case load would drop substantially, because they would be concerned only with building permits for public and semi-public development agencies.⁹⁹ The Zoning Commission case load would increase substantially, but it is difficult to estimate how much. The Zoning Commission would hear only cases appealed from hearing examiners. The Commission could process an appeal rapidly because hearing record, report and recommendations of the hearing examiner would be before them, and it would not be necessary in many cases to hold a second hearing. This entire apparatus would have to issue only about ten building permits each working day.¹⁰⁰

It is anticipated that there will be more public and private investment in preparation of neighborhood plans and project plans than at present. This fact is independent of the proposals of this Thesis. The proposed laws seek to make such neighborhood plans and

⁹⁹See pp. 217-218.

¹⁰⁰See pp. 198-204.

project plans more effective. They could be adopted by the Zoning Commission or hearing examiners as the lawful control for the subject property. This would be a more efficient use of a type of planning which is bound to increase in extent anyway.

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APPENDIX A

PROPOSED BOSTON PLANNING AND LAND DEVELOPMENT ACT

Index to Sections of:

PROPOSED ACT AUTHORIZING THE CITY OF BOSTON TO REALIZE PLANS FOR THE PHYSICAL DEVELOPMENT OF ITS NEIGHBORHOODS AND FUNCTIONAL AREAS BY REGULATING THE USE, SIZE, LOCATION, AND APPEARANCE OF BUILDINGS, AND THE USE AND SUBDIVISION OF LAND: SHORT TITLE:
THE BOSTON PLANNING AND DEVELOPMENT ACT

1. The Development Commission
2. Definition of Subdivision
3. Objectives and Permitted Forms of Development Regulations
4. Development Examiners: Qualifications, Duties, Appointment
5. Areas, Lots and Buildings Controlled by this Act
6. Public Service Corporation Exemption Procedure
7. Development Maps
8. Effect of this Act on Construction, Demolition, Use and Subdivision
9. Application by Property Owner for Permit or Amendment
10. Participation in Decision Making by Interested Parties
11. Provisional Decision of the Development Examiner
12. Authorization of Permit by the Development Examiner
13. Hearing on the Application by the Development Commission
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15. Authorization of Permit by the Development Commission
16. Appeal to Superior Court

17. Jurisdiction of Superior Court
18. Amendments to the Development Code
19. How Amended
20. Automatic Permit after Delay
21. Fees
22. No Board of Appeal Jurisdiction
23. Regulation of Non-conforming Use
24. Effect of Amendment on an Existing Permit
25. When this Act shall take Effect

AN ACT AUTHORIZING THE CITY OF BOSTON TO REALIZE PLANS¹ FOR THE PHYSICAL DEVELOPMENT OF ITS NEIGHBORHOODS AND FUNCTIONAL AREAS, REGULATING THE USE, SIZE, LOCATION, AND APPEARANCE OF BUILDINGS, AND THE USE AND SUBDIVISION OF LAND.

I. THE DEVELOPMENT COMMISSION.

On the effective date of this Act, the board known as the Zoning Commission, as established by Chapter 665 of the Acts of 1956, as amended, shall become the Development Commission within the Boston Redevelopment Authority, or in such other department of the city of Boston as the city council with the approval of the Mayor shall from time to time determine. The Development Commission shall consist of eleven commissioners appointed by the mayor, subject to confirmation by the city council, as follows: ²

¹This proposed Act concentrates more on the impact of plans on development than on the preparation and review of plans. The latter topic is beyond the scope of this Thesis.

²The membership qualifications for the Development Commission are the same as those for the existing Zoning Commission. This similarity makes it possible for the entire membership of the Zoning Commission to become the Development Commission. If this Planning and Land Development Act were modified for use in a new town, the membership of the Development Commission might be elected at large rather than nominated by organizations. This was suggested in a published review of an earlier draft of this Thesis and proposed Act. "Administrative Discretion in Zoning," Harvard Law Review, Vol. 82, No.3 (January, 1969), 668 -685, 680. Where the Development Commission is elected rather than appointed, it would be important that the Planning and Land Development Act be adopted and amended by the general, local legislative body rather than by the state legislature, in order to further central planning within the city.

One commissioner from two candidates nominated by the Associated Industries of Massachusetts, one commissioner from two candidates nominated by the Boston Central Labor Union, one commissioner from two candidates nominated by the Boston Real Estate Board, one commissioner from two candidates nominated one by The Boston Society of Architects and one by the Boston Society of Landscape Architects, one commissioner from two candidates nominated by the Boston Society of Civil Engineers, one commissioner from two candidates nominated by the Greater Boston Chamber of Commerce, one commissioner from two candidates nominated by the Massachusetts Motor Truck Association, Inc., one commissioner from two candidates nominated by the Master Builders Association of Boston, and three commissioners selected at large by the mayor, of whom one shall own alone or with one or more other persons, and shall occupy in whole or in part as his place of residence, a dwelling house having not more than three dwelling units. All Development Commissioners shall be residents of Boston; provided, that any Zoning Commissioner may become a Development Commissioner irrespective of his place of residence.

The first eleven Development Commissioners shall serve the same length of term on the Development Commission that they were to serve on the Zoning Commission. As the term of any initial Development Commission member, or of any subsequent Development Commissioner, expires, his successor shall be appointed in like manner as such commissioner for a term of three years. Any vacancy in the office of a Development Commissioner shall be filled in the same manner for the unexpired term.

The Development Commission shall elect one of its members as chairman and another as vice chairman. The Development Commission shall also elect a secretary, who need not be a member of the Development Commission. Each member of the Development Commission shall be compensated at the rate of thirty-five dollars for each meeting attended, but the maximum amount paid to any member in one year shall be forty-two hundred dollars. A quorum of three members of the Development Commission is necessary to hold a hearing or vote a decision. A simple majority vote of those voting is necessary for a decision. The Development Commission shall cause to be made a detailed record of all its proceedings, which record shall include the vote of each member participating in its decisions, and the absence of a member or his failure to vote.

The Development Commission shall not be subject to the supervision or control of the officer or board in charge of such department of the city as the commission shall from time to time be in; but unless otherwise ordered by the mayor, the Development Commission shall not make any annual or other report except through such officer or board, and shall not communicate with the mayor except through such officer or chairman of such board.

2. DEFINITION OF SUBDIVISION³.

A subdivision is the dividing of land into two or more parts for immediate or future sale, or the dedication or reservation of land for access, recreation or other common public use. All subdividing within the City of Boston shall be regulated by this Act and the Development Code after the effective date of this Act, except those exempted by Section 5. Subdividing shall be regulated as part of other forms of development regulation in order to improve coordination between building construction, uses of space, access, sizes and arrangement of lots, grading and landscape treatment. Further objectives and means of regulating subdivision are set out in Section 3.

3. OBJECTIVES AND PERMITTED FORMS OF DEVELOPMENT REGULATIONS.

- 1) The Development Commission shall adopt regulations known as the Development Code controlling the dimensions and arrangement of buildings, the uses of space (enclosed and outdoor), and the subdivision of land. Development regulations shall be written to accomplish the objectives of this section. A particular regulation may further several objectives and a particular objective may require several forms of regulation for accomplishment.

³There is no subdivision law in Boston. In a Jurisdiction where there is a subdivision law, its administration should be absorbed into that set out here.

A particular parcel or class of buildings, use of space or subdivision of land may be subject to one or several forms of regulation, to accomplish one or several objectives. Forms of regulation are listed under objectives as convenient means of classification. Any form of regulation listed in this section may be imposed to accomplish any of the objectives. An objective may be used as a development regulation, leaving the method of accomplishing the objective to the discretion of the land developer or the Development Examiner empowered by this Act.

Objectives below are expressed by CAPITAL WORDS;

permitted forms of regulation by words in small letters following each group of objectives.

2) PHYSICAL CONDITIONS FOR WELL BEING.

OBJECTIVES:

HEALTH, SAFETY AND CONVENIENCE OF THE PUBLIC AND USERS OF BUILDINGS AND LAND.

ADEQUATE LIGHT AND FRESH AIR.

ENVIRONMENTS WHICH ARE WITHIN THE RANGE OF HUMAN COMFORT.⁴

Permitted forms of regulation:

Measurement of atmospheric characteristics, such as levels of sound, quantities of daylight, minimum or maximum temperatures.

Height, number of stories and size of buildings and structures.

⁴For this phrase and many others within Section 3. I am indebted to Kevin Lynch. See his essay entitled, "City Design and City Appearance," pp. 247 - 276, in William Goodman, ed., Principles and Practices of Urban Planning, (Chicago: International City Managers Association, 1968) pp. 247 - 268.

Ratio of floor area to lot area.

Per cent of lot that may be occupied.

Size of yards, courts, and open spaces.

3) ENVIRONMENTAL NEEDS OF PERSONALITY.

OBJECTIVES:

DIVERSITY OF SENSATIONS AND ENVIRONMENTS.

ENVIRONMENTS WHICH ENCOURAGE THE INTELLECTUAL, EMOTIONAL AND PHYSICAL DEVELOPMENT OF THE INDIVIDUAL .

OPPORTUNITIES FOR PERSONS REGARDLESS OF RACE, ETHNICITY, SOCIAL CLASS, OR INCOME TO RESIDE IN AND USE STRUCTURES IN ALL PARTS OF THE CITY.

Permitted forms of regulation:

The kind, color and texture of building materials, planting and surface materials.

Control over signs, advertising, lighting and other objects having symbolic or communication functions.

Regulate land grading, surface materials, and planting in new subdivisions.

Control over the size and dimensions of lots.

Requirements that housing developments contain a wide range of lot sizes or rental accommodations for occupancy by a mixture of income classes.

4) ADEQUATE FACILITIES FOR URBAN LIFE.

OBJECTIVES:

A VARIETY OF SOUND AND LIVABLE HOUSING.

SITES FOR EMPLOYMENT AND ECONOMIC PRODUCTION.

VIGOROUS NEIGHBORHOOD AND COMMUNITY INSTITUTIONS.

EFFECTIVE CONSUMER SERVICES AND RETAIL OUTLETS.

Permitted forms of regulation:

Location of buildings, structures and land for residences, commerce, manufacturing and other purposes.

Extent and intensity (minimum or maximum) of various uses of space, such as number or density of dwelling units, occupants, employees, volume of trade or production.

Division of space or territory by public, semi-public and privateuses.

Minimum common facilities which must be included in large developments, such as convenience shops, meeting rooms and outdoor recreation facilities.

5) CIRCULATION.

OBJECTIVES:

MINIMIZE LENGTH OF TRIPS.

PROVIDE SAFE AND CONVENIENT ROUTES OF TRAVEL FOR VARIOUS FORMS OF TRANSPORTATION.

MAKE ALL PARTS OF THE CITY ACCESSIBLE BY PUBLIC TRANSPORTATION.

EXTEND OPPORTUNITIES FOR PEDESTRIAN ACTIVITY.

Permitted forms of regulation:

Location, arrangement and capacity of channels of movement and access such as walks and streets.

Control over the opening of streets and common ways.

Minimum standards for construction of streets and parking areas in subdivisions.

Maximum permitted intensities of flow.

Location and treatment of parking spaces for motor vehicles.

Location and treatment of off-street loading spaces.

6) COORDINATION OF PARTS OF THE CITY TO PRODUCE A COMMUNITY.

OBJECTIVES:

ACCENTUATE THE CHARACTER OF DIFFERENT PARTS OF THE CITY TO AID ORIENTATION AND IDENTITY.

CONGRUENCE OF STRUCTURE, SPACE OR MOVEMENT CHANNEL TO THE HUMAN ACTIVITY WHICH WILL OCCUPY IT.

Permitted forms of regulation:

A zoning regulation may apply to a class of uses, subdivisions, or building construction described in the regulations, or specified in location by corresponding symbols on the Development maps.

Development regulations for a lot or building may be unique, and not used elsewhere in the City.

A sequence of experiences or perceptions to be sensed by a person moving through an environment.

Adoption of plans for neighborhood, project area or functional parts of the City.

A requirement that a proposed development have a functional relationship to adjacent development.

A requirement that applicants for development of adjacent or nearby sites collaborate on their designs.

7) PUBLIC FACILITIES AND OBJECTIVES.

OBJECTIVES:

PROTECT THE PUBLIC INVESTMENT IN TRANSPORTATION, UTILITIES, SCHOOLS, LIBRARIES AND OTHER CIVIC BUILDINGS, STRUCTURES, FACILITIES AND LAND.
TO FACILITATE THE PROVISION OF NEW TRANSPORTATION, UTILITIES, SCHOOLS, LIBRARIES AND OTHER CIVIC BUILDINGS, STRUCTURES, FACILITIES AND LAND.
TO FURTHER THE GOALS OF THE GENERAL PLAN, URBAN RENEWAL PLANS, AND OTHER PLANS, POLICIES AND PROGRAMS OF THE CITY OF BOSTON.

Permitted forms of regulation:

Require improvements in subdivision such as utilities and recreation space primarily for the need and benefit of residents or users of the proposed subdivision. Require a bond in lieu of improvements as a condition for approval of a final subdivision plan.

Prohibit or limit for a period of three years the subdivision or private development of a site designated in an approved plan for a public facility or other public use.

Adopt regulations that are necessary and proper to carry out a public objective.

8) Maintain a balance between preservation and innovation.

OBJECTIVES:

PRESERVE BUILDINGS OR AREAS OF HISTORICAL ARCHITECTURAL VALUE.
ENCOURAGE THE REHABILITATION OR CLEARANCE OF OBSOLESCENT FACILITIES.
ASSEMBLY OF SMALL PARCELS INTO TRACTS OF MORE USABLE SIZE.
ENJOY THE BENEFITS OF INNOVATION, RESEARCH AND EXPERIMENTS IN THE USE OF SPACE AND CONSTRUCTION OF BUILDINGS.

Permitted forms of regulation:

Prohibition against razing a building or structure, or changing its facade or exterior.

Prescribe the form and content of proposed subdivision plats.

Establish which classes of subdivision are to be accomplished by recorded plat, which by metes and bounds description.

Text, numbers, diagrams, plans, elevations, sketches, photographs, three-dimensional models, or other media effective to communicate environmental objectives may be incorporated into the Development Code.

Wide participation by the public in the review of new development proposals.

9) ENJOY THE PRODUCTS OF THE ENVIRONMENTAL DESIGN PROFESSIONS.

OBJECTIVES:

TO FURTHER THE BUILDING AND MAINTENANCE OF OUTSTANDING ARCHITECTURE, LANDSCAPE ARCHITECTURE AND URBAN DESIGN.

Permitted forms of regulation:

Common means of specifying quality and characteristics of man-made environments used in architecture, landscape architecture and urban design may be employed.

Regulations may specify quantities or qualities which are not capable of exact measurement, in order to accomplish illusive but worthwhile objectives.

Delegation to design professionals appointed as Development Examiners of power to interpret qualitative regulations.

Buildings may be regulated to form spaces and masses which function as a totality, rather than as an assortment of individual realms.

A large building may be specified on one lot and a small building on an adjacent lot, as is done in contemporary large-scale architecture, landscape architecture and urban design practice.

4. DEVELOPMENT EXAMINERS: QUALIFICATIONS, DUTIES, APPOINTMENT.

The Development Commission shall be assisted in the administration of this Act by Development Examiners who are on the staff of the Building Commissioner of the City of Boston. A Development Examiner may exercise discretion in interpreting qualitative and other zoning regulations; may receive, interpret and apply to his decisions communications from interested parties regarding an application for a permit for building construction, use of space or subdivision of land; authorize the building commissioner to issue a permit according to the terms of this Act and the Development Code; may recommend to the Development Commission amendments to the regulations relating to a permit application before him. A Development Examiner shall have a college or university degree in architecture, city planning, landscape architecture or urban design. He shall be nominated by the Building Commissioner and approved by the Development Commission before taking office. A Development Examiner may be removed from that office by a vote of nine members of the Development Commission, but such a person may be transferred to another post in the Building, Development or other Department of Boston government, and may subsequently be re-appointed as Development Examiner.

5. AREAS, LOTS AND BUILDINGS CONTROLLED BY THIS ACT.

Development regulations under this Act shall apply to all land and buildings within the City of Boston except the following:

- 1) Land or facilities owned by the Boston School Committee or the City of Boston;
- 2) the area within the Historic Beacon Hill District, as created by Chap. 616, Acts of 1955 as amended;
- 3) the area within the Back Bay Residential District, as created by Chap. 625 of the Acts of 1966, as amended;
- 4) areas within districts created under the Historic District Enabling Law, G. L. Chap. 40 C, as amended;
- 5) within projects undertaken by Urban Redevelopment Corporations, as established by General Laws ch. 121 A;
- 6) land or buildings owned or controlled by the Boston Housing Authority;
- 7) land or buildings presently or previously owned or controlled by the Boston Redevelopment Authority and subject to the use and dimensional controls of an Urban Renewal Plan and located within an Urban Renewal or Land Assembly and Redevelopment project, as defined by G. L. Chap. 121;
- 8) other areas or classes of land or buildings excepted from the Development regulations by the Development Commission.

6. PUBLIC SERVICE CORPORATION EXEMPTION PROCEDURE⁵.

A building structure or land used or to be used by a public service corporation may be exempted from the operation of a development regulation or amendment if upon petition of the corporation, the state department of public utilities shall, after public notice and hearing, decide that the present or proposed situation of the building structure or land in question is reasonably necessary for the convenience or welfare of the public.

7. DEVELOPMENT MAPS.

As part of the Development Code there shall be a set of maps showing parcels of land within those parts of Boston controlled by development regulations. On each lot or adjacent lots of land on such maps there shall be letters, numbers, or other symbols designating development regulations applicable to such lot or lots. Within the Development Code there shall be detailed regulations in any of the forms set out in Section 3 of this Act corresponding to the letters, numbers or other symbols of the Development Maps.

A similar provision has been a part of Boston zoning law since 1924.

8. EFFECT OF THIS ACT ON CONSTRUCTION, DEMOLITION, USE AND SUBDIVISION.

No structure or part thereof shall be erected, altered, extended, demolished or reconstructed, no structure or lot shall be used or occupied, and no land shall be subdivided except in conformity with the Development Code adopted according to this Act, and except according to a building, use or subdivision permit issued by the Building Commissioner. No building, use or subdivision permit (herein called permit) shall be issued by the Building Commissioner for a particular construction, use or subdivision until such permit has been authorized by a Development Examiner or the Development Commission under the terms of this Act and the Development Code. The signing by the Building Commissioner of a proposed final plat or a proposed deed creating a subdivision, when he has been so authorized by a Development Examiner or the Development Commission, can constitute a subdivision permit. State and municipal officers shall refuse to issue any permit or license for a building, use or subdivision which would be in violation of this Act or the Development Code. The Recorder of Deeds shall not record a subdivision controlled by this Act unless a subdivision permit has been issued or the proposed subdivision plat or proposed deed creating the subdivision has been signed by the Building Commissioner. The Secretary of the Development Commission shall transmit general changes in the Development Code affecting this procedure to the Recorder of Deeds. Any sale of a lot or parcel of land created by a subdivision which violates this Act or the Development Code shall be void. The buyer of such lot or parcel of land may recover the purchase

price, legal or other expenses incurred in the sale or recovery or the purchase price, and in addition punitive damages which may be awarded by the Superior Court, not to exceed the amount of the purchase price.

9. APPLICATION BY PROPERTY OWNER FOR PERMIT OR AMENDMENT.

A person seeking a permit according to this Act and the Development Code or seeking a change in the development regulations as they affect his property, shall present to a Development Examiner such application, plans and descriptive material the Examiner may require. The Development Examiner may require alternate plans, cost benefit analysis, market analysis or other studies to determine the effect of the proposed development. The application which proposes building dimensions, use or subdivision not then permitted on that lot by the Development Code shall be considered an application for amendment to the Development Code which shall reach the Zoning Commission by the procedure of Sections 9, 10, 11, 13 and 14. A party owning an interest, including an option, in a building or parcel of land may join with other owners or with a neighborhood organization of residents or businessmen seeking adoption of regulations to carry out a development plan for a street, block, neighborhood, or section of the City. Such an application shall follow the procedures of Sections 9-11, 13 and 14 of this Act.

10. PARTICIPATION IN DECISION MAKING BY INTERESTED PARTIES.

Upon receipt of an application for a permit or a change in the Development Code or Maps, a Development Examiner will file notice in a neighborhood or general circulation newspaper giving a brief description

of the proposal with its location, inviting interested parties to communicate with the Development Examiner by phone, mail or in person their preference regarding the proposal. The Development Examiner shall send a similar notice to owners of property adjacent to a proposed permit or change in the Development Map, as such owners' names appear on the most recent local tax list. The Development Examiner shall record and consider all communications received within seven days⁶ from the date of publication, and may record and consider late communications. Interested parties include persons owning or frequently using land or buildings within view of the premises in question; neighborhood organizations of residents or businessmen; non-profit organizations with environmental objectives such as conservation, open-housing, historic preservation; professional organizations of environmental experts such as architects or realtors; any public agency including the Development Commission and the Boston Redevelopment Authority.

II. PROVISIONAL DECISION OF THE DEVELOPMENT EXAMINER.

The Development Examiner will make a provisional decision as to the building dimensions, use or subdivision he will approve or recommend that the Development Commission approve. The decision of the Development Examiner may take any of the forms described in Section 3. In making

⁶Only seven days are given interested parties to communicate their opinion about a proposed development to the Development Examiner, and only seven days are allowed for an appeal to the Development Commission. Such minimal time will reduce development cost though not at the expense of due process, provided the public is taught to respond quickly to any development proposal brought to its attention.

his decision the Development Examiner can include some features sought by the applicant, in exchange for the applicant's making concessions in use or dimensions which are in the public interest. The Development Examiner may make a decision which the applicant does not concur in and may decide that no permit should be issued or no development regulations changed. In making his provisional decision the Development Examiner shall consider the objectives presented by the plans of the applicant, preferences of interested persons, other plans and policies of the City of Boston, other objectives of Section 3 of this Act, and objectives discovered during the review procedure of Sections 9, 10 and 11, including objectives not anticipated or intended by the Development Code for the lot in question at the time of application. If the provisional decision proposes building dimensions, use or a subdivision not permitted on that lot by the Development Code, the decision shall be a recommendation to the Development Commission for amendment to the Development Code.

12. AUTHORIZATION OF PERMIT BY THE DEVELOPMENT EXAMINER

- 1) This section applies when an applicant following the procedure of Section 9 seeks a permit and not simply a change in the Development Code. The Development Examiner shall, after he has made the provisional decision described in Section 11, give notice of his decision in writing to those interested parties who have made specific written request for such notice.

2) An interested party may within seven days after notice of decision, appeal such provisional decision to the Development Commission.

3) If no timely appeal has been filed, and if the Development Examiner certifies that his provisional decision is within the authority granted him by the Development Code for the land or building in question, the Development Examiner shall authorize the Building Commissioner to issue a permit or sign a proposed final subdivision plat or sign a proposed deed creating a subdivision.

4) When a proposed subdivision plat includes streets, parks or other common land which is to be dedicated to public use and maintained by the City of Boston or some other public agency, the Building Commissioner shall not sign the subdivision plat until such street, park or other common land has been accepted for dedication and maintenance by the appropriate public agency or board. This requirement applies to plats offered to the Building Commissioner under Section 12 as well as Section 15.

13. HEARING ON THE APPLICATION BY THE DEVELOPMENT COMMISSION.

Except those applications for which the Development Examiner can authorize the Building Commissioner to issue a permit, as set out in

Section 12, the Development Examiner shall deliver the application for a permit or change in the Development Code or Maps, with plans and other material submitted, a record of communications from interested parties, and his provisional decision with reasons, to the Development Commission. Upon receipt of such material the Development Commission shall file notice in a neighborhood or general circulation newspaper, and will notify by mail those interested parties who were notified by mail of the Development Examiner's decision, according to Section 12. The notice will include the location and a brief description of the provisional decision; it will invite interested persons to communicate their preferences regarding the proposal in writing or by attending a public hearing at the time and place indicated.

14. FINAL DECISION BY THE DEVELOPMENT COMMISSION.

After a public hearing on an application which comes before the Development Commission according to the procedure of Section 13, the Development Commission shall make a final decision. The decision may take any of the forms described in Section 3.

The Development Commission can accept or modify the provisional decision of the Development Examiner; can include some features sought by the applicant, in exchange for the applicant's making concessions in use or dimensions which are in the public interest; may make a decision the applicant does not concur in, may decided that no permit should be issued, or no Development Regulations changed. In making its decision the Development Commission shall consider the objectives presented by the plans of the applicant, preferences of interested parties, other plans

and policies of the City of Boston, other objectives of Section 3 of this Act, and objectives discovered during the review procedures of Development Sections 9-14, including objectives not anticipated or intended by the Development Code for that lot at the time of application. If the Development Commission decides on building dimensions, space use or a subdivision not permitted on that lot by the Development Code, the decision constitutes an amendment to the Code. The decision of the Development Commission shall take effect immediately upon its written certification by the Secretary of the Commission.

15. AUTHORIZATION OF PERMIT BY THE DEVELOPMENT COMMISSION.

Immediately after the decision of the Development Commission, the Building Commissioner may issue a permit according to such decision, or sign a proposed subdivision plat or sign a proposed deed creating a subdivision.

16. APPEAL TO SUPERIOR COURT.

Within fifteen days after the decision of the Development Commission, the applicant or an interested party aggrieved by the decision of the Development Commission, whether or not previously a party to the proceeding, may appeal to the Superior Court sitting in equity for the County of Suffolk. The Superior Court may suspend such permit, pending outcome of the appeal.

Every person so appealing shall file a bond with sufficient surety to be approved by the court, for such a sum as shall be fixed by the court, to indemnify and save harmless the person or persons in whose favor

the decision was rendered from all damages and costs which he or they may sustain in case the decision of the Development Commission is affirmed. Upon an appeal under this section, the court shall hear all pertinent evidence and determine the facts, and upon the facts as so determined, annul such decision if found to exceed the authority of the Development Commission, or make such other decree as justice and equity may require. The foregoing remedy shall be exclusive; but the parties shall have all rights of appeal and exception as in other equity cases. Costs shall not be allowed against said Development Commission unless it shall appear to the court that the Commission in making the decision appealed from, acted with gross negligence, in bad faith or with malice; and costs shall not be allowed against the party appealing from the decision of the Commission unless to shall appear to the court that said party acted in bad faith or with malice in appealing to the court.

All issues in any proceeding under this section shall have precedence over all other civil actions and proceedings.

17. JURISDICTION OF SUPERIOR COURT.

The Superior Court sitting as aforesaid shall have jurisdiction to enforce the provisions of this act, and any regulation or amendment thereof adopted under this act, and may restrain by injunction violation thereof.

18. AMENDMENTS TO THE DEVELOPMENT CODE.

The following types of amendments may be made to the Development Code and Maps:

1. A Development Code amendment which applies to a class of buildings, uses of space or subdivision of land.
2. A Development Code amendment affecting procedure.
3. An amendment to the Development Maps which extends the area or number of lots to which a set of development regulations apply.
4. Development Code or Map amendments applying to a particular building or contiguous group of buildings, use of space, or lots, and not intended as a general set of regulations to be applied to other locations.⁷

19. HOW AMENDED.

- 1) A party owning an interest, including an option, in a building or parcel of land may apply for a permit or for any of the types of amendment described in Section 18 by following the procedures of Sections 9-14.
- 2) An interested party to an application for a permit or amendment made according to Section 9 may appeal for amendment any decision affecting such application by following the procedures of Sections 12-14.
- 3) The Development Commission by its own initiative may amend the Development Code in any of the four methods described in Section 18, after notice and public hearing. Such notice shall be published at least fourteen days prior to such hearing in a neighborhood or general circulation newspaper, and shall give the time and the place of the hearing,

⁷This Code explicitly allows regulations to be fitted to a particular lot or development without a requirement that these regulations be the same as an adjoining lot or other lot similarly situated. This is a return to the equity concept that each parcel of land is unique and immobile. It should further the popular objective that each part of the city have visual identity. This Code offers to all parties and applicants the same fair procedure, but does not establish internally uniform zoning districts. It permits the Development Commission to establish uniform districts where that is desirable.

either state the express terms of the proposed amendment or state the general subject and the times when and the place where a copy of the express terms may be obtained.

No person or agency may apply directly to the Development Commission for an amendment to the Development Code, or for a permit, but it is proper for public agencies having responsibility for planning, development or redevelopment within the City to inform the Development Commission of Code amendments which would further some public objective or plan so that the Development Commission can initiate appropriate Code Amendments.

20. AUTOMATIC PERMIT AFTER DELAY.

The Building Commissioner shall forthwith grant the permit sought by a party owning an interest, including an option, in a building or parcel of land if such person has applied for such permit according to the procedures of Sections 9-14 and has not received within sixty days from the date of application either:

- a) a provisional decision of the Development Examiner, as described in Section 11, from which no timely appeal has been made to the Development Commissioner, or
- b) a Final Decision by the Development Commission, as described in Section 14, unless the applicant has agreed in writing with a Development Examiner or the Secretary of the Development Commission to defer his rights under this Section for some stated period.

21. FEES.

Fees to be paid by applicants or interested persons for the various applications and appeals of Sections 9-15 and 19 may be established by the Development Commission. Such fees to the permit applicant may vary with the magnitude of the cost, use, lot or construction involved.

22. NO BOARD OF APPEAL JURISDICTION.

The Board of Appeal provided for in the Boston building code shall have no jurisdiction or powers under this Act or the Development Code.

23. REGULATION OF NON-CONFORMING USE.

A development regulation or any amendment thereof shall apply to any change in the use of a building or structure or of land, and to any alteration of a building or structure when the same would amount to reconstruction, extension or structural change, and to any alteration of a building or structure to provide for its use for a purpose or in a manner substantially different from the use to which it was put before alteration, or for its use for the same purpose to a substantially greater extent, or any new subdivision of land; but no development regulation nor any amendment thereof shall apply to existing buildings or structures, nor to the existing use of any building or structure, or of land to the extent to which it is used at the time of the adoption of such regulation or amendment or any existing division of land, except that any such regulation or amendment may regulate non-use of a non-conforming use so as not to unduly prolong the life thereof.

24. EFFECT OF AMENDMENT ON AN EXISTING PERMIT.

No development regulation or amendment thereof shall affect any permit issued or any building or structure lawfully begun before notice of hearing before the Development Commission has first been given; provided, that construction work under such a permit is commenced within six months after its issue, and the work, whether under such permit or otherwise lawfully begun, proceeds in good faith continuously to completion so far as is reasonably practicable under the circumstances. The issuance of a permit or the beginning of work upon a building or structure, or a change of use, after such notice has been given, shall not justify the violation of a development regulation or an amendment thereof subsequently adopted as the outcome of such hearing and in substantial accord with such notice; provided the subsequent steps required for the adoption of such regulation or amendment thereof are taken in their usual sequence without unnecessary or unreasonable delay.

25. WHEN THIS ACT SHALL TAKE EFFECT.

The present Zoning Commission established by Ch. 665 of the Acts of 1956 as amended shall prepare a new Development Code and Maps according to this Act, while carrying out their duties under the Ch. 665 of the Acts of 1956. The Zoning Commission shall hold hearings on a new Development Code and Maps according to the procedures of Section 19 of this Act. Upon an affirmative vote of six members of the Zoning Commission, this Act and the first Development Code shall take effect together. Ch. 665 of the Acts of 1956 as amended, and any zoning regulations written

according to such Act, shall be repealed upon the taking effect of this Act and the Development Code and Maps prepared according to this Act. Upon the taking effect of this Act the Zoning Commission shall become the Development Commission.

